UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1997/8
27 June 1997

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-ninth session
Item 4 of the provisional agenda

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Final report on the question of the impunity of perpetrators of human rights violations (economic, social and cultural rights), prepared by Mr. El Hadji Guissé, Special Rapporteur, pursuant to Sub-Commission resolution 1996/24

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INTRODUCTION

A. Background to the study

1. By decision 1991/110, adopted at its forty-third session, the Sub-Commission on Prevention of Discrimination and Protection of Minorities requested two of its members, Mr. El Hadji Guissé and Mr. Louis Joinet, to draft a working paper examining in depth the question of the impunity of perpetrators of violations of human rights.

2. The working paper (E/CN.4/Sub.2/1992/18) was submitted to the Sub-Commission at its forty-fourth session. It includes a preliminary analysis of the legal mechanisms and the practices that facilitate impunity and proposes guidelines for the consideration of anti-impunity measures. In its resolution 1992/23, of 27 August 1992, the Sub-Commission took note of the working paper prepared by Mr. Guissé and Mr. Joinet and decided to request them to draft a study on the impunity of perpetrators of violations of human rights in order, in particular, to propose measures to combat that practice. The Commission on Human Rights, in its resolution 1993/43, of 5 March 1993, endorsed the Sub-commission's decision and the Economic and Social Council, by its decision 1993/266, approved the Commission's action. In paragraph 5 of its resolution 1992/23, the Sub-commission decided to consider the report at its forty-fifth session, in 1993.

3. On 26 August 1993, in its resolution 1993/37, the Sub-Commission welcomed the preliminary report - and not interim report, as it was erroneously entitled - (E/CN.4/Sub.2/1993/6) prepared jointly by Mr. Guissé and Mr. Joinet and requested them to submit a report, including conclusions and recommendations, on the first aspect of the question of impunity, relating to civil and political rights, at its forty-sixth session (1994), and to continue their study on the second aspect of the question, concerning economic, social and cultural rights. A short preliminary report (E/CN.4/Sub.2/1994/11) on impunity and economic, social and cultural rights was therefore submitted at the forty-sixth session. At that session, taking account of the difficulties of liaison between the two authors and in order to facilitate the treatment of the question, the Sub-Commission decided, by its resolution 1994/34, to entrust Mr. Joinet with the completion of the first aspect, concerning civil and political rights, and Mr. Guissé with the second aspect, concerning economic, social and cultural rights, and requested the Special Rapporteurs to submit their respective reports to the Sub-Commission at its forty-seventh session.

4. At the forty-seventh session (1995), a first interim report on opposition to the impunity of perpetrators of human rights violations (economic, social and cultural rights) (E/CN.4/Sub.2/1995/19) was submitted by its author, Mr. Guissé. In view of the interest in the subject covered by the study and the importance of the questions raised, a second interim report (E/CN.4/Sub.2/1996/15) was submitted in 1996; it was designed to supplement the study and included the suggestions made by some members of the Sub-Commission, as well as by individuals and non-governmental organizations concerned with the question. In its resolution 1996/24, the Sub-Commission requested the Special Rapporteur to submit his final report at its forty-ninth session (1997).

5. This document, based on the latter two reports mentioned above, thus constitutes the final report on the impunity of perpetrators of violations of economic, social and cultural rights - a final report in which very many questions of great importance are nevertheless raised. The essential purpose, however, is surely to pave the way for a discussion on the subject and to promote an exchange of ideas on those questions. That would make it possible to supplement the study and contribute to the genuine realization of economic, social and cultural rights.

B. Purpose of the study

6. This part of the study, which deals solely with economic, social and cultural rights, concerns all current or recent violations of those rights and of so-called collective rights such as the right to development and the right to a healthy environment, irrespective of their perpetrators, whether States or their agents, groups of States, national or international private organizations or individuals or groups acting outside the competence of the State. It should, however, be noted that, if a State tolerates in its territory - or in territory that it is occupying by force - the commission of acts by individuals which constitute violations, it bears the responsibility and must prevent their impunity.

7. It will also be necessary, by in-depth investigation, to identify the victims or their representatives and to quantify, as far as possible, the harm done to them. This study on the question of the impunity of perpetrators of violations of economic, social and cultural rights includes a number of suggestions and recommendations for the prevention and avoidance of any such violations.

I. PRELIMINARY CONSIDERATIONS

8. The first concept of human rights is a political one: it comprises respect by the State for the rights and freedoms of the human person; this concept prohibits State intervention in the area of the rights and freedoms of the individual. These so-called conventional rights derive from an individualistic approach; they set their beneficiaries against the State. While these rights were being codified, a second category of rights made its appearance, i.e. economic, social and cultural rights, which no longer set individuals against the State but make them allies to achieve the rights in question. Whereas, in the case of civil and political rights, the State must stand aside so as to allow the individual to exercise those rights without interference, economic, social and cultural rights require the State to act and give the individual the material support needed to enjoy them effectively.

9. This characteristic, which arises from their modes of implementation, in no way impairs the indivisibility of the various human rights, as affirmed by several international instruments. The preamble common to the two International Covenants on Human Rights recognizes that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights. The 1968 Proclamation of Tehran reaffirmed that human rights and fundamental freedoms are indivisible; in the

context of that interdependence, the realization of economic, social and cultural rights is of crucial importance for the effective exercise of civil and political rights.

10. The General Assembly of the United Nations has also stated that equal attention and urgent consideration should be devoted to the realization, promotion and protection of both civil and political rights and economic, social and cultural rights. The concept of human rights thus becomes a politico-economic one, encompassing at once the security and protection of the individual and his material and moral well-being.

11. Human rights constitute an indivisible whole reflecting the unity and uniqueness of the human being. The frequently affirmed indivisibility of the various categories of human rights precludes economists and jurists from attaching greater priority to one category or another, depending on their training or their country's level of development.

12. In its resolution 4 (XXXIII) of 21 February 1977, the Commission on Human Rights stresses the responsibility and duty of all members of the international community to create the necessary conditions for the full realization of economic, social and cultural rights as an essential means of ensuring the real and meaningful enjoyment of civil and political rights and fundamental freedoms. It calls upon all States to take prompt and effective measures, both on the national and on the international level, to remove all obstacles to the full realization of economic, social and cultural rights and to promote all actions that will secure the enjoyment of the said rights.

13. Certain States, particularly developing ones, have stressed the difficulties that can arise when attempts are made to reconcile the objectives of planned material development and the protection of human rights. Some of them have, moreover, stated that they attach high priority to economic and material development and strengthening their institutions.

14. This interdependence of civil and political rights and of economic, social and cultural rights confirms their identical legal basis, even if each category of rights has its own rules.

15. The special nature of economic, social and cultural rights was very clearly expressed during the discussion of methods of implementing them. The Secretary-General of the United Nations noted that it might take time effectively to transform these rights into rights directly enforceable and sanctioned by law. In other words, these rights might in due course be given a concrete form that could be invoked in a court of law. In that event, the violation of such rights, whoever the perpetrator, should not and cannot go unpunished.

16. During the discussions on methods of implementing economic, social and cultural rights, an implementation that necessitates a certain level of economic development and material support, the representatives of several developing countries expressed the fear that the inevitably slow progress in realizing those rights might be taken for unwillingness on their part. They had not reckoned with the developed countries' determination to undermine any possible basis for a truly fair world economic order where economic, social

and cultural rights would have a chance of being realized. It was soon observed afterwards that the fears of the former and the hypocrisy of the latter very rapidly became a source of massive and grave violations of economic, social and cultural rights and of collective rights such as the right to development and the right to a healthy environment.

17. The General Assembly has recalled the need and the urgency to ensure, both nationally and internationally, that progress is made in the area of human rights. It stressed this point in the 1969 Declaration on Social Progress and Development, article 2 of which states that "social progress and development shall be founded on respect for the dignity and value of the human person and shall ensure the promotion of human rights and social justice".

18. Article 22 of the Universal Declaration of Human Rights specifies that "Everyone ... is entitled to realization, through national effort and international cooperation ... of the economic, social and cultural rights indispensable for his dignity and the free development of his personality". Further to the reference to international cooperation, the International Covenant on Economic, Social and Cultural Rights provides in article 2, paragraph 1, that "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant".

19. The commitment thus made is a guarantee for the legal protection of these rights. While it is true that many studies have been made of economic, social and cultural rights and of collective rights such as the right to development and the right to a healthy environment from the point of view of their history, legal basis, regulation or scope, there have been very few on ways of combating violations of them. Any serious study of the kind will be concerned with giving these rights a definite legal value, the basis for which exists in the numerous relevant international human rights instruments.

20. Before listing some of these instruments and in response to requests by some representatives of States or non-governmental organizations, it is important to outline a definition of the impunity which is the subject of this report. Impunity can be understood as the absence or inadequacy of penalties and/or compensation for massive and grave violations of the human rights of individuals or groups of individuals. This definition is applicable to civil and political rights, as well as economic, social and cultural rights, and also to collective or communal rights.

21. To be complete and effective, the campaign against impunity must be preceded by a serious and thorough investigation to bring to light the factual sources of the violations and identify the perpetrators and the victims so that the former can be punished and the damage done to the latter can be appropriately remedied.

22. The campaign against impunity should focus on the absence of penalties or compensation and the inadequacy of penalties or compensation already in existence or contemplated. The obligation to protect and promote all human rights includes that to punish and compensate the harm and damage which result from their violation.

23. Numerous international legal instruments incorporate the principle of combating impunity with regard to the violations of economic, social and cultural rights and the right to development. Although the legal framework for the right to a healthy environment is still lacking, that does not prevent it from being included in the existing legal framework. The most important instruments enshrining this principle include the Charter of the United Nations and the Universal Declaration of Human Rights:

(a) The Charter of the United Nations: its Preamble states that the peoples of the United Nations are determined "to reaffirm faith in fundamental human rights" and "to promote social progress and better standards of life in larger freedom". Article 1, paragraph 3, stipulates that one of the Purposes of the United Nations is "to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion". Article 55 adds: "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote ... universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion";

(b) The Universal Declaration of Human Rights: according to article 22, everyone "is entitled to realization, through national effort and international cooperation ..., of the economic, social and cultural rights indispensable for his dignity and the free development of his personality".

24. This principle has been taken up and developed by other international instruments adopted by the United Nations and by the specialized agencies affiliated to it, including:

(a) The International Covenant on Economic, Social and Cultural Rights which, in its article 2, provides that each State Party to the Covenant, shall undertake to take steps, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the Covenant. This commitment means that the State must both ensure effective enjoyment of these rights and establish the legal framework rendering it possible to protect them and punish their violation;

(b) The Proclamation of Tehran of 1968, by which the international community reaffirmed its determination to put an end to gross denials of human rights and to intensify efforts and initiatives at the national and international levels in the area of human rights. The International Conference on Human Rights at Tehran had been the opportunity to review the progress made in protecting human rights since the adoption of the Universal Declaration of Human Rights, to assess the effectiveness of the methods and techniques used and to identify the main obstacles encountered in the area;

(c) The Declaration on the Establishment of a New International Economic Order (General Assembly resolution 3201 (S-VI));

(d) The Programme of Action on the Establishment of a New International Economic Order (General Assembly resolution 3202 (S-VI));

(e) The Declaration on Social Progress and Development (General Assembly resolution 2542 (XXIV));

(f) The Declaration of Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV));

(g) The Charter of Economic Rights and Duties of States (General Assembly resolution 3281 (XXIX));

(h) General Assembly resolution 3362 (S-VII) on development and international economic cooperation;

(i) The Philadelphia Declaration of 1944, which is part of the Constitution of the International Labour Organization (ILO);

(j) The Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy of 1977, adopted by the Governing Body of the International Labour Organization. Article 4 of the Declaration states that the principles set out in the Declaration are commended to Governments, employers' and workers' organizations and the multinational enterprises themselves. Article 8 stipulates that all the parties concerned by the Declaration should respect the Universal Declaration of Human Rights and the International Covenants;

(k) The Declaration on the Right to Development of 1986 (General Assembly resolution 41/128); and

(l) The Vienna Declaration and Programme of Action of 1993.

25. Regional conventions and declarations take closer account of the special characteristics of the peoples they govern. Consequently, they are in no way opposed to the provisions of the universal instruments but are complementary to them. The two sets of instruments constitute an important legal machinery for the more effective protection and promotion of all human rights. The following instruments at the regional level may be mentioned:

(a) The African Charter on Human and Peoples' Rights (in particular articles 20, 21 and 22);

(b) The European Social Charter; and

(c) The Protocol of Amendment to the Charter of the Organization of American States of 1985 and the 1988 Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights.

26. These instruments and many more unequivocally lay down the obligation of individuals, groups of persons, States and the international community to combat impunity for those who violate economic, social and cultural rights.

In certain States, where the promotion and protection of human rights is a Government concern, appropriate legislation has been drafted to punish any human rights violations over and above the incorporation into domestic law of the international legal standards in order to make it possible for national legal, administrative or economic authorities to apply them.

27. This final report is focused on three points:

(a) The first concerns certain practices which give rise to violations of economic, social and cultural rights. While some of these practices now belong to history, they have nevertheless left entire peoples in complete destitution without any reparation. Other more current practices are the cause of serious violations of economic, social and cultural rights;

(b) The second point relates to the consequences of such practices for economic, social and cultural rights and for collective rights; and

(c) The third point concerns the actual campaign against impunity; it will deal with the organization of the campaign in terms first of preventive measures and then of jurisdictional ones.

II. SOME PRACTICES WHICH GIVE RISE TO VIOLATIONS OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

28. The events and acts that lead to the violations of economic, social and cultural rights can be of any kind. They are neither identifiable in advance nor necessarily known at all. They may be related to historical events that have been consigned to the past or of current significance. These practices may affect individual or collective rights. The list that follows is therefore not exhaustive but consists of cases chosen because of their extreme seriousness or frequency. When they relate to historical events, they are of interest for this study only to the extent that they have had, and continue to have, serious and very negative effects on the enjoyment of the economic, social and cultural rights of individuals and peoples. The serious violations which resulted from them have remained unpunished and there has been no reparation for them. The best known of them are essentially slavery, colonization, apartheid and the looting of the cultural heritage of the third world (see section A below).

29. The violations listed above are international and concern several countries because either their perpetrators - States or their nationals - or their victims are individuals or peoples from several countries. They are large-scale actions that often lasted for many years. Their commission in time and in space constitutes international offences which must come within universal jurisdiction and be made imprescriptible. Whereas, according to the law in force in most countries, prosecutions and the imposition of penalties become extinguished by the expiry of a period of time fixed by the law, crimes under international law are considered to be imprescriptible, i.e. however much time has elapsed since their commission, it will always be possible to prosecute and punish their perpetrators and to repair the damage caused. This principle is strengthened by that of universal jurisdiction, which means that an international crime comes within the jurisdiction of all States.

30. Impunity for violations of basic rights compromises the international obligation of States to guarantee these rights and to punish failure to respect them. What is the point of proclaiming rights if they can be violated with impunity and disregarded? In this connection, it should be remembered that the efficacy of the international system for protecting the human rights of the individual is based on the right to an effective remedy, yet the various mechanisms which produce impunity make this right completely inoperative. This denial of justice occurs in the first place at the domestic level but also at the international level since it closes all access by individuals to the international human rights bodies.

31. Contemporary violations of economic, social and cultural rights are national or international. The following are examples of international practices that give rise to serious violations of economic, social and cultural rights: debt, structural adjustment programmes, deterioration of terms of trade, corruption, laundering of drug money, the fraudulent activities of transnational corporations, etc. Violations committed on national territory, most of which are considered to be justiciable offences, include: misappropriation of public funds, misuse of company assets, corruption, tax and customs evasion, financial speculation, fraudulent or unlawful enrichment, exploitation of illegal labour and migrant workers, etc.

A. Some historical precedents

32. The Special Rapporteur saw fit to refer to these violations because they are still having a negative effect on the economic, social and cultural rights of entire peoples. From the point of view of international law, these violations should be regarded as crimes against humanity and, consequently, not subject to a statute of limitations and coming under universal jurisdiction. Such a characterization should prevent the perpetrators of these violations from taking advantage of the impunity afforded them today. This impunity in respect of crimes against humanity which take the form of violations of economic, social and cultural rights, of fundamental rights and of the right to development seriously and systematically prevents the effective enjoyment and full application of human rights throughout the world.

33. According to international law, and more particularly that elaborated since the judgement of the Nürnberg Tribunal and in the work of the International Law Commission, crimes against humanity also include gross actions against any civilian population, whether in the context of an armed conflict or outside it. Impunity for these crimes denies human beings any possibility of living in a world based on justice, peace, freedom and democracy.

34. International unlawful actions engaging the responsibility of a State towards other States or the international community as a whole constitute what is termed a State crime. This crime, according to the International Law Commission, can result from a serious and large-scale violation of an international obligation that is of essential importance for the protection of the human being, such as those prohibiting slavery, genocide or apartheid. The actions engaging the international responsibility of a State are the same as those giving rise to individual criminal liability in the case of persons who, whether as groups or as private individuals, commit actions

constituting an offence. According to the preamble to the Hague Convention of 18 October 1907 - approved in France by the Act of 25 May 1910, populations remain under the protection and the rule of the principles of the law of nations, as they result inter alia from the laws of humanity and the dictates of the public conscience. The duty of prosecuting and punishing crimes under international law rests primarily with the State on the territory of which the crimes were committed and in which the perpetrators can be apprehended.

35. It arises from this concept that the obligation to make redress rests on individuals, on States and on the entire international community. It is for the State and the international community to organize the political and legal framework needed to undertake, with any chance of success, the campaign against impunity for violations of economic, social or cultural rights, whether individual or collective. A consideration today of the historical violations of these rights leaves no room for doubt that this campaign requires cooperation between the State and the international community.

36. Among the historical cases of relevance to this report, particular reference will be made to: slavery, colonization, apartheid and pillage of the cultural heritage of the third world.

1. Slavery

37. Slavery was not a new phenomenon in the fourteenth century. It had been practised by other civilizations on other peoples. However, the massive and systematic way in which it was applied in Africa, on African peoples, was out of all proportion to what may have happened elsewhere. Carried out in the most inhuman ways, it was more costly in human lives, more destructive of the social fabric and the source of greater economic and cultural looting than mankind had every known. It was systematized and generalized to the point of being called the "black-slave trade".

38. The long and painful period during which the slave trade flourished was indeed begun by individuals but was subsequently shamelessly developed by companies and ultimately organized and directed by States, all of them European. For centuries, millions of men, women and children were torn from their society and taken forcibly to the Americas to be treated there in the most inhuman and degrading manner. Some of these people, after incredible sufferings, perished during the ocean crossings. African history in the period of slavery is marked by a series of crimes and all manner of violations of the rights of the human person which are beginning to be recognized but which have never formed the subject of any redress, while the Powers formerly responsible for this traffic continue to profit from it. Thus, for centuries the African continent witnessed the exploitation and pillage of its physical and human resources. Historically speaking, this exploitation is characteristic of the impunity for the serious violations of the rights of the peoples that suffered them.

39. It must immediately be said that the African peoples were not the only victims of slavery. The indigenous peoples of the New World were dispossessed of all their lands, which were exploited using the costless labour that slavery supplied. The dual genocide committed, both upstream and downstream of slavery, has remained unpunished.

40. Slavery left Africa in a state of economic and cultural ruin marked by social ravages from which it has never recovered. The scope of this report is too narrow for a detailed description of the numerous serious violations of rights of all kinds, whether civil and political or economic, social or cultural, considered either collectively or individually.

41. The international community and the States which benefited from slavery have recognized the harm done to the victim peoples and apologies to Africa, even by the sovereign pontiff, are not sufficient to erase the odious crime and undo its consequences, including dire poverty, underdevelopment, destitution, disease and ignorance. These violations must be taken into account, although any prospect of decent redress requires a definite will and political courage.

42. Slavery is also the looting of the wealth and resources of the victim countries and, when such exploitation went on for centuries, it is undeniable that the harm caused is huge and difficult, if not impossible, to quantify even if its reality is undoubted despite the time that has elapsed.

2. Colonization

43. When the international community became aware of the seriousness and extent of the calamity of slavery, it undertook to abolish it but had already opened the door to another form of exploitation and domination: colonization. The slaving Powers turned into colonial Powers. As in the previous system, the conflicts that preceded and accompanied colonial conquests were brutal and inhuman. Professor Mohamed Bedjaoui has defined colonization as a social, economic and political act. It expressed itself, he says, in the legal relationships of domination and exploitation. From the point of view of international law, it is nothing else but an attempt to establish a relationship of subordination between two nations in every sphere.

44. Colonization entailed the destruction and modification of the structures of the colonized peoples. The models of civilization and development imposed on them served only to deepen and worsen the work of destruction undertaken by the colonizers, who were not interested in helping the colonized peoples to escape from their ignorance. The international community, through its deliberative body of the period - the General Assembly of the League of Nations - which was dominated by the Western countries, had authorized those countries to divide up the third world and form colonial empires. They then had the backing of the international community to plunder the third world and to dispossess the colonized peoples of almost all their lands and possessions. Thus encouraged, they stopped at no form of exploitation, taking advantage to develop their own countries and to enrich their peoples.

45. Slavery and colonization ended up by ruining the entire third world which, moreover, has never recovered. For centuries, the colonial Powers, which are easily identifiable today, pillaged the wealth of the colonized countries to the profit of and on behalf of their nationals and to ensure their own economic and social development. The colonized peoples and countries, worn out and ruined as they were, finally took up arms to free themselves at the cost of enormous sacrifices. It is now neo-colonization that is perpetuating the domination and exploitation of the countries caught up in the machinery of the system.

46. The decolonization movement, after the severing of the bonds of domination and exploitation, posed the problem of the relationships between the former colonies and the colonizer in terms of development, equality and restitution of wealth which, of course, encountered the resistance of the debtor countries. This gave rise to the saying that one of the prerequisites for decolonization was to secure the previously existing status quo.

47. One of the most important factors in maintaining that situation is the cooperation provided by the former colonial Powers, which uses a series of constraints to impose its will on the former colony, now a "sovereign State" but actually without means or power. In this unequal relationship between assisted and assister, the latter imposes its will and thus maintains the general orientation of existing or new structures in the economic, social and cultural spheres. Whatever form decolonization took, whether violent or negotiated, it has led everywhere to the same disastrous result of dependence and exploitation, maintaining an unjust world economic order which the developing countries, composed essentially of former colonies, insist should be revised to achieve a fairer balance.

3. Apartheid

48. A tragic vestige of colonial domination, apartheid in many ways recalls slavery. The system meant, in economic terms, complete and effective enjoyment by a white minority of all the wealth and natural resources of a people dominated and excluded on racial grounds. It was erected into a system of government and applied for about a century accompanied by violations of human rights, both economic, social and cultural rights and civil and political rights. These massive and grave violations have never been remedied in any way, although they have been characterized in their aggregate as crimes against humanity and thus not subject to any statute of limitations.

49. From the time of the first Dutch colony, the "whites" gradually extended their domination over the whole of South Africa. This trend intensified with the arrival of the British and other "white" population groups which, by violence or cunning, appropriated nearly all the agricultural and residential lands in South African territory. The "whites", who represented 20 per cent of the population, had control over and use of 80 per cent of the territory, whereas the "blacks", who represented 70 per cent of the population, controlled only 13 per cent of the lands. As stated above, this situation, maintained at the expense of the blacks, lasted for more than a century. That system was not peculiar to South Africa only. What is today Namibia was governed for a very long time by the same process consisting of a black majority dominated by a white minority. Even today, survivals of the system continue to produce victims.

4. The pillage of the cultural heritage of the third world

50. At the same time as the dominated peoples and countries were being abominably exploited, their cultural heritages were being looted. Nowadays, cultural goods which belonged to these people and countries are easily to be found in the museums of the Western world, without any quid pro quo, of course. This cultural looting of the third world by the former colonial Powers is continuing through a traffic knowingly organized by them. They are

acting thus in contempt of the laws of the third world countries and flouting the international standards worked out by the international community to which they have freely acceded.

51. For the victim peoples and countries, slavery, colonization, apartheid and the cultural looting of the third world were frameworks for gross and systematic violations of human rights and for a total disregard of their right to development. These violations have never been redressed and deprive the victims of any possibility of developing themselves and leading a decent life.

52. The practices listed above belong to the past but have baneful consequences for the economic life of the peoples and countries that were the victims. Today, these peoples are living in a state of absolute poverty, as frequently noted by the international community. The serious crimes of massive violations of human rights produced by these practices are ongoing ones. The principle in such cases is that, so long as the nefarious action has not ceased, there can be no prescription, the more so as these are crimes against humanity which are thus imprescriptible and subject to the principle of universal jurisdiction. This principle makes it possible for the courts in all countries to take cognizance of an act constituting a crime against humanity.

B. Present practices which are sources of violations of economic, social and cultural rights, the right to development and the right to a healthy environment

53. The practices and procedures which are sources of violations of the economic rights of individuals or groups in all societies cannot be exhaustively listed because of their commonplace nature. Those discussed below are perhaps the most usual, but they are not the only ones. They can also, in some cases, involve several countries simultaneously and several population strata. The countries affected are not necessarily the developing ones. The economies and peoples of the developed countries also suffer from them. In the latter case, the damage takes the form of a high rate of unemployment accompanied by an intense social crisis.

1. Debt

54. It is urgent and absolutely essential to understand the catastrophic and intolerable predicament of the developing countries carrying a heavy burden of debt which prevents any economic improvement. The result of several pernicious systems of exploitation, indebtedness necessitates multifarious solutions - political and/or legal, pragmatic or planned. Debt and debt-servicing are steadily impoverishing the peoples concerned more and more every day, systematically preventing them from exercising their basic rights.

55. The Lester Pearson Commission had already estimated that, by 1977, debt-servicing, i.e. annual repayment of principle and payment of interest, would alone exceed the gross amount of new lending by 20 per cent in Africa and 30 per cent in Latin America. In other words, the new loans which a developing country felt obliged to enter into for development purposes could not be used for development and would not even be enough to cover the servicing of existing debt. Developing countries will in future have regularly to take on new debt, not for investment, but for repayment.

56. In this way, debt which increases as it is repaid becomes a further bond of dependency. For many countries, it is an intolerable burden. This situation has led to debt crises in almost every developing country, necessitating alleviation or renegotiation of their debt without any lasting solutions being found. This situation gives rise to economic and social crises which often culminate in very serious social disturbances, leading to political instability that often prevents any economic development. The debt crises of the 1980s caused the debtor countries to accept Draconian conditions for the reorganization of their economies. They had then not only to export more to repay their debt but also to restructure their economies according to neo-liberalist principles, i.e. to deregulate economic activity, privatize public companies and greatly cut back State expenditure.

57. While public debt is increasing steadily at a rapid rate, with the grave consequences described, official aid to the developing countries is declining. The "developed" countries, which perpetuate this situation, and the international institutions (World Bank and International Monetary Fund) which act as their collection agencies, should revise their policies so as to ensure an international transfer of resources to the developing countries, sufficient to spare them the difficulties caused by indebtedness. The primary mission of the international financial institutions is precisely that of assisting such transfers.

58. It will be recalled that, in 1944, the Bretton Woods Conference decided to set up the World Bank and International Monetary Fund (IMF) for the purpose of helping to improve world trade relations. Article 1 of the IMF Articles of Agreement sets out six objectives for the Fund, one of them being to facilitate the expansion and balanced growth of international trade and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of productive resources. IMF recommendations and guidelines, which are especially hard on countries wishing to renegotiate their debts, are in flagrant contradiction with the aims set out in article 1 of its statutes. It is worth noting that the loans granted to developing countries have actually been merely a series of fictitious operations bringing no benefit to the populations concerned, which are nevertheless called on to repay them. The loans granted in fact take different directions, none of which leads to the really needy segments of the population. They are partly used to service debt and partly misappropriated by those responsible for managing them, to be redeposited in the banks of the creditor countries or reinvested in companies in those same countries.

59. The main consequences of such practices are to multiply and exacerbate the problems of the developing countries. The main victims are, of course, the deprived segments of society who have less to live on, and nothing seems able to halt their slide towards absolute poverty. All the evidence suggests that perpetuating the debt of the developing countries is the result of a deliberate political decision designed solely to frustrate any attempt by the developing countries and their peoples to achieve economic and social progress.

60. It is certain that international financial imbalances will strike directly at the already frail economies of the developing countries. Such imbalances will continue to worsen as long as world economic structures are

marked by unequal terms of trade. Moreover, there is also every indication that the perpetuation of indebtedness means that it can be used as a powerful weapon to bring developing countries to their knees, while providing their governing classes with the means to cushion themselves and to be the advocates - I was going to say the architects - of an economic policy which is catastrophic for the vast majority of the world's poor.

61. Taking exclusively into account the situation of the sub-Saharan African countries, the Secretary-General of the United Nations launched, on 15 March 1996, what is said to be an unprecedented programme to mobilize all the organizations of the United Nations system and funds in an amount of $25 billion to put the economies of these countries back on their feet. The resources will not be new ones but rather a reorientation of resources already existing at the national and international levels. The international financial institutions are considering a series of measures to lighten the burden on the most heavily indebted countries. According to the World Bank, it is impossible to break the vicious debt circle with the existing financial instruments and new ones will have to be created. The Bank proposes, in the first instance, to establish a ceiling for debt-servicing which should not exceed 20 to 25 per cent of the export earnings of the country concerned. As for the debt itself, its weight must not be greater than two and a half times the value of exports. In practice, these alleviating mechanisms would intervene only as a last resort, once all the present conventional remedies had been exhausted. In view of the fact that the multilateral debt cannot be rescheduled, still less cancelled, the measures proposed seem to be simple stopgap devices designed to ensure repayment of the debt. We all remember the promises made in the context of the structural adjustment programmes which very rapidly turned into a resounding failure in all the countries that applied them.

62. The manner in which the debt is managed at present also enables transnational corporations to frustrate any attempt by the developing countries to assert their sovereignty or chart the course of their own development. Because of the role it plays today, debt is a formidable instrument for domination which the transnational corporations wield effectively against the developing countries. Reference must be made here to the failure of the Bretton Woods institutions to carry out their primary mission - that of creating and maintaining a balance between the various actors of international economic life in the best interests of mankind. This failure, combined with the activities of the transnational corporations and the selfishness of the developed countries, has led to the establishment of two harmful and destructive practices in the form of structural adjustment programmes and, more recently, devaluation of the currencies of the developing countries.

2. Structural adjustment programmes

63. The interdependence of the national economies of States and their dependence on the current framework of the world economy make cooperation between States increasingly important and heighten the responsibility of agents and partners in development in connection with structural adjustment programmes which, it should be recalled, are merely techniques or ways of managing shortages with the declared purpose of bringing debt under control.

This attempt at debt control has so far been a failure as blatant as it is significant. These structural adjustment programmes have inflicted enormous inhuman and counter-productive suffering on the deprived populations of the debtor countries. These methods of managing shortages which steadily worsen the state of dire poverty of the peoples concerned were imposed on them by the debtor countries with the complicity of the international financial institutions in a fictitious context of negotiation in which the creditors had the power to lay down the law.

64. In a new approach to its social policy, the International Labour Organization (ILO) is doing everything possible to alleviate social deprivation, not only by creating safety nets but also by taking preventive action in the form of establishing a more intensive dialogue with a view to influencing the Bretton Woods institutions. On 21 June 1993, the International Labour Conference reaffirmed this approach by adopting the resolution entitled "Resolution concerning social protection and the alleviation of unemployment and poverty, and the social dimension of structural adjustment and transition to a market economy". The ILO spirit thus differs completely from the attitude of the Bretton Woods institutions as if they did not belong to the same United Nations system. This lack of harmony demonstrates, if need there still be, the deviation of the financial institutions from their primary mission.

65. Structural adjustment programmes impose a heavy burden on workers and their families and on other vulnerable groups such as women, children, the unemployed, the jobless and the handicapped. They imperil public spending on education, health and collective social services. Wage levels fall and job losses are frequent. In short, no economic, social or cultural human right is observed or protected. The measures adopted in the context of structural adjustment programmes have culminated in a downward revision of exchange rates which reduces the purchasing power of the workers and have caused inflation which is intolerable for the less favoured segments of the population.

66. Bringing about drastic cuts in the budget provisions of the States concerned, structural adjustment programmes eventually prevent them from meeting their social and general welfare obligations to their peoples. Structural adjustment programmes have merely worsened the state of economic ruin of the underdeveloped countries. They are actually means of distraint designed to recover the sums owed to the wealthy countries without any concern for the difficulties of the debtor countries.

67. Downward adjustments of exchange rates or currency devaluations have considerably weakened the economies of the third-world countries. Quite apart from the economic power of the State, the multiplier effects of such monetary policies damage the investment possibilities of private companies and individuals; they are sources of inflation and of uncontrollable surges in prices. Companies then downsize and lay off workers with a clear reduction in income. Devaluation leads to a change in the relative prices of imports, which become dearer in the national currency, and exports, which become cheaper in foreign currencies. In view of the fact that the developing countries are already suffering from the deterioration in the terms of trade, a fall in exchange rates cannot but be disastrous for their economies.

3. Embargo

68. In order to combat certain political regimes considered to be totalitarian and not respecting the rights of the human person, the international community may adopt measures designed to punish the States concerned. It then seeks, by a concerted action, to isolate them politically, economically and commercially. A State thus targeted can neither import nor export products needed for its development and the material welfare of its people. The embargo thus decided upon can be total and comprise everything that a country might need (foodstuffs, medicines, construction materials, school supplies, military equipment, etc.) or else partial and relate only to certain supplies, particularly military supplies.

69. In both cases, the resulting privations, aimed at overthrowing the leaders, have a serious impact on the civilian population and particularly on vulnerable groups, which are the first to suffer. This seems to be the case in Iraq, where hundreds of thousands of children have died as a result of the total embargo imposed on their country after the Gulf War. It has been noted that, in actual fact, only the civilian population has suffered from the measures adopted in the framework of the embargo in question. The expected effectiveness has never been achieved. Further thought should thus be given to the steps to be taken to rescue civilian populations from the clutches of dictators, instead of throwing out the baby with the bathwater.

70. However, in no case should a people be deprived of medicine and food and vulnerable groups should, in accordance with the spirit of the international instruments governing the international institutions, be given the fullest and most appropriate assistance in case of need. For the international community to be guilty of massive violations of collective and individual economic rights would be an utter aberration and the greatest contradiction developed within the United Nations system.

4. Corruption

71. The word "corruption" means the abuse of public trust for private purposes. It is a moral phenomenon, even though money is involved in the vast majority of cases. A public office is used for the benefit of one or more individuals, rather than in the national interest. Corruption may exist independently of any financial benefit; it is universal and multiform. According to Professor Robert Klitgaard of Harvard University, there are several definitions of corruption in existence but it can be said simply that corruption means the abuse of an office for personal ends. This office, says Professor Klitgaard, may be public or private but corruption is usually regarded as a public phenomenon. An individual abuses the public confidence placed in him to serve his own interests or those of the group to which he belongs. To understand the many forms of corruption, it is first necessary to consider the nature of the situations and persons concerned: civil servants, businessmen, private individuals or companies using the same processes. The external factor intervening in the decision-making process influences the unwarranted benefit to the decision maker or executive in the form of a gratuity or the promise of a gratuity.

72. The Interregional Seminar on Corruption in Government, held under the auspices of the United Nations at The Hague from 11 to 15 December 1989, in association with the Department of Technical Cooperation for Development, identified impunity as an underlying element of the various forms of corruption. The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Havana from 27 August to 7 September 1990, noted in its resolution 7 on corruption in Government that that form of corruption was universal and that it had deleterious effects on the economies of all countries, but particularly those of the developing countries. Nowadays, this corruption is developing on a world scale. At the international level, it is harmful to the economies of the countries individually affected and, moreover, amplifies the imbalances caused by the world economic order as a whole.

73. In its resolution 1992/50 on the fraudulent or unlawful enrichment of top State officials, the Commission on Human Rights pointed clearly to the responsibility of the North in connection with the commission of that crime in the countries of the South and thus raised the question, still unclear in international law, of the restitution to despoiled peoples, for reinvestment in local economic, social and cultural development, of the funds which their leaders have extorted from them, usually with the complicity of foreign banks. The existence of highly developed capital markets encourages certain offences such as insider offences. The same is true in the countries with economies in transition. The headlong privatization taking place is accompanied by similar phenomena.

74. Corruption affects all sectors of both public and private economic life. The existence of a public sphere and a private sphere is a prerequisite for corruption, but certain differences can be observed in the interests pursued. A businessman, working within the law, who slips an inducement across the table is generally pursuing an end corresponding to the interests of his company. The act - though reprehensible - thus comes within the framework of the normal operation of the enterprise. This is also the case of the politician who, in his own interest or in that of his party, tries to cover up a financial scandal but cannot do so without the help of other persons whose action or inaction he purchases. Another area very propitious to corruption is nepotism. This is a phenomenon extremely difficult to pin down but, since the criterion of competence has been replaced by that of favouritism, it creates between the decision maker and the beneficiary of the decision a link of dependency which may well influence future decisions.

75. The corrupted and the corrupter are not accomplices: each is the perpetrator of a distinct offence, subject to its own procedures and punishments. Moreover, corruption must be distinguished from the traffic of influence that one individual exercises over others to persuade them to refrain from carrying out one of their duties so as to give him an undue advantage. Both the corrupter and the corrupted can be civil servants, State agents, private individuals or elected officials. Corruption thus creates a dual responsibility: the corrupted (the passive subject) is just as responsible as the corrupter (the active subject). This dual responsibility gives rise to the fact that both parties are liable to punishment. Corruption can also engage the responsibility of the State if the latter is organizing it

through the operation of its organs or when, by a permissive attitude, it accepts the fact that private entities or private individuals are practising it.

76. The internal corruption described above can have several connections in other countries: it then becomes transboundary and is carried out by private companies or individuals on a large scale and involving several States. Corruption, whatever its perpetrator and its extent, constitutes economically speaking a serious obstacle to the economic and social development of the countries affected. Thus, poisoning as it does the economy and the social fabric, corruption violates the economic, social and cultural rights as well as the right to development and to a healthy environment of the peoples and population sectors concerned.

77. José Arthur Rios wrote: "Corruption is the product of inverted ethics, in that the act of corrupting involves the idea of reciprocity, which is actually an element of equity and justice". In a modern society, this rule of reciprocity results in corruption when it involves transactions which subordinate the management of public resources to the interests of the private sector. In primitive societies, the custom of reciprocal gift-giving establishes a network of obligations between the groups. This network is functional and legitimate in such societies and in theory raises no question of corruption. Gift-giving can become an instrument enabling some individuals to impose their will on those who are unable to reciprocate. This latter group may be working for the private sphere at the expense of the public sphere or the general interest. In the context of this report, we must avoid lumping together minor forms of corruption (e.g. of public officials) and major forms which are sources of massive violations of human rights.

78. The advent of modern society has endowed money with three separate functions which often make it the catalyst for the phenomenon of corruption, since money has no bounds, can be transferred unobtrusively from one person to another and can be used for any transactions by virtue of its abstract nature.

79. As noted earlier, corruption is universal. Nowadays, all States, whether developed or developing, suffer from the same phenomenon to varying degrees. Corruption is thus a functional phenomenon operating at all levels and in all spheres of activity. It has been rightly pointed out that corruption cannot thrive in a pluralistic and democratic society.

80. Corruption, trafficking in influence and breach of trust by officials are offences generally connected and usually carried out in the same context and by means of the same methods. These offences differ from the other economic offences in that the victim freely participates in full awareness of the harm being done to him but attracted by the gain. Organized and applied on a large scale, these offences cause immeasurable damage to larger and larger social strata.

5. Tax and customs fraud and other economic offences

81. When fraudulent actions constitute serious damage to a nation's economy, they indirectly affect individual rights, whether economic, social or cultural. The concept of fraud includes all actions intended to reduce tax liability or evade taxation. It means the direct or indirect violation of tax

law. The concept is still a vague one and, although all countries combat the phenomenon, no clear definition has yet been arrived at either by consensus or on the basis of national judicial practice. It should be mentioned that the person engaging in fraud is usually also involved in corruption. The offences committed in the above-mentioned areas affect some very sensitive economic sectors. Since they are the main sources of revenue of the developing countries, they play a significant part in the overall development effort.

82. There are, of course, other economic offences, the number and importance of which will vary according to the economic situation of the country concerned. As is noted by Professor Fontan, who has made a scientific study of the motivations of economic delinquents, the economy of shortages develops as much economic delinquency as the economy of abundance. Without entering into details of the economic offences at the internal level, it may be said that they are very serious sources of violations of the economic, social and cultural rights of individuals and peoples. They include misappropriation of public funds, misuse of company assets, financial speculation, unlawful enrichment, laundering of drug money and the complicity of certain credit establishments in receiving funds which have been fraudulently acquired.

83. These various offences, which are sources of serious violations of individual rights, are punishable in domestic legal systems with more or less effectiveness. At the international level, it may be feared that the methods adopted to combat this delinquency are of a rather empirical nature. Closer collaboration between the various countries concerned, outside the institutional framework of the United Nations, would be desirable.

III. THE CONSEQUENCES OF SUCH PRACTICES FOR ECONOMIC, SOCIAL AND CULTURAL RIGHTS AND FOR COLLECTIVE RIGHTS

84. The practices and procedures outlined above have a negative impact on the economic, social and cultural rights of individuals and also on collective or communal rights (right to development and right to a healthy environment). They have led in the past, and continue to lead, to serious and massive violations of these rights and even to their being completely disregarded by those who are responsible for and benefit from them. This combination of ignorance on the one side and omission on the other is a source of difficulty for the achievement of human rights in general and economic, social and cultural rights in particular.

85. Slavery, colonization and apartheid, practices which have disappeared or are rapidly disappearing, were, in the recent past the principal massive violations of collective or individual human rights. It should be pointed out here that these categories of rights are closely linked, as the former provide the framework for the enjoyment of the latter. These collective or communal rights are to individual economic, social and cultural rights what democracy and the rule of law are to civil and political rights.

86. While civil and political rights are now more or less an accepted and integral part of most national legislation, the same cannot be said for economic, social and cultural rights and collective rights which some States regard not as rights but as a factual situation. This erroneous idea does not

resist a serious analysis of the legal and economic foundations of these rights. The extremely reluctant attitude of the developed countries concerning them is merely an expression of a certain selfishness.

A. Violations of collective or communal rights

1. Violations of the right to development

87. The right to development grew out of the economic inequality and the disadvantaged position of the underdeveloped countries. It should, moreover, be mentioned that the right to development establishes the principle of reparation to which are entitled the peoples and countries which had long been robbed of their wealth by slavery and colonization. The enormous inequalities of all sorts between poor countries and developed countries are the result of centuries of pillaging and exploitation during which civilizations were destroyed, social structures and means of production wiped out and the ecosystem devastated in Africa, Asia and Latin America. Unequal distribution of wealth and income at both the national and international levels has worsened in recent decades and has reached such dimensions as to be a genuine international scandal.

88. The Global Consultation on the Realization of the Right to Development as a Human Right, held at Geneva from 8 to 12 January 1990, essentially concluded that the traditional development strategy was transnational in scope and mainly consisted of creating modern industrial enclaves and zones of exclusion in the developing countries. Those enclaves and zones usually have nothing but negative effects on developing countries' economies and serve ultimately as bases for the transnational corporations to spread their activities among various countries in order to avoid having to comply with domestic laws and international standards. Such establishments have usually proved to be unstable because the parent company can decide, for commercial, economic or political reasons, to move its subsidiaries to other countries. The purpose of such practices is to evade the economic laws of the countries concerned and they alone constitute violations of the right to development of the populations of one or more countries.

89. Traditional development strategies have also resulted in the creation of privileged national elites which follow the same patterns of consumption as high-income groups in developed countries, while the great masses of the population cannot even meet their most basic needs. That is the way in which the leaders of developing countries have been designing their national economic policies for almost half a century. I should not fail to mention that this gap in incomes and lifestyles is not limited to the developing countries; it also exists, and is becoming increasingly frequent, in the developed countries. As stated above, the actors and beneficiaries of these strategies constitute a minority, compared with an overwhelming but deprived majority.

90. Such practices, when combined with the perverse impact of indebtedness and of the deterioration in the terms of trade, together with the baneful activities of the transnational corporations, prevent the developing countries and their peoples from effectively enjoying their right to development.

2. Violations of the right to a healthy environment

91. The major environmental crises of recent decades have highlighted the transnational and multi-dimensional nature of their effects and have shown that the solutions required are collective or communal ones which, consequently, can be carried out only by the international community and by the States themselves, either individually or in cooperation with the United Nations as called for in Articles 55 and 57 of the Charter. A balanced ecosystem, preservation of natural resources or simply the survival of the planet are urgent requirements which have to be met if our system is not to be destroyed.

92. The right to a healthy environment has been violated as a result of human activities which increase concentrations of greenhouse gases in the atmosphere, with all the consequent effects on global warming, rising sea levels and climate in general. While producing their own negative effects on the enjoyment of human rights in general and economic, social and cultural rights in particular, these phenomena have multiplier effects which also exacerbate the increasingly serious and numerous problems faced by the populations of poor regions. Human activities which affect the right to a healthy environment also take the form of deforestation which over the centuries has led to substantial forest losses and environmental degradation.

93. According to a report by the Secretary-General of the United Nations Conference on Environment and Development, the conservation of biological diversity is fundamental to human life. It is a basic factor in the way in which living organisms are structured. As such, it provides support for ecosystems, for the regulation of water and the atmosphere and the basis for agricultural production. When genetic variations are lost, therefore, the result is not only that specific and potential properties and adaptations are lost but also that the number of species is diminished, ecosystems are impaired and the ability to sustain human life is damaged. That destruction of the ecosystem and of the equilibrium necessary for the survival of our species is aggravated in modern life by the effects of such contemporary human activities as pollution, the dumping of toxic and hazardous wastes and so forth.

94. Pollution of the land, sea and air from various sources causes major risks to the life, health and well-being of populations. The Bhopal and Chernobyl disasters are just two examples among many which are still vivid memories, especially because of the large number of victims. According to estimates by the League of Red Cross and Red Crescent Societies, the Chernobyl disaster affected, and continues to affect more than 4 million people, in addition to the 135,000 people evacuated from the villages closest to the reactor, who are still living on contaminated land. Those victims fear for their future, exposed as they are, as the scientists tell us, to congenital illnesses and malformations.

95. Ecological disasters, nuclear or otherwise, risk destroying every form of life. The right to a healthy environment is closely linked to economic, social and cultural rights. The exportation to developing countries, particularly in Africa, of hazardous waste produced by the industries of the North is, in my opinion, a serious violation of the most important human

rights, foremost of which is the right to life. However, individuals and companies prompted by the allure of gain, have engaged in transactions for the transfer of industrial wastes in utter disregard of the rights of individuals and peoples.

96. The scandals of 1987 and 1988 which followed the discovery of deals whereby African countries received derisory sums of money from western companies in return for the use of land for the dumping and burial of toxic waste, brought a justifiably violent reaction from some developing countries. It is in that context that the Council of Ministers of the Organization of African Unity (OAU) declared in its resolution 1153 (XLVIII) of 25 May 1988 that such dumping was a crime against Africa and the African people. On 7 December 1988, the United Nations, following in the footsteps of OAU, adopted a resolution in which it expressed profound concern regarding practices of dumping nuclear and industrial wastes in Africa. The 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal was the result of a compromise between those who favoured a complete ban on transboundary movements of waste and those who wished to define the framework and legal conditions for the transfer of wastes, as though any negotiation was possible in that field.

97. Any transaction for the transfer of wastes is a serious violation of the right to a healthy environment and, quite obviously, of the whole set of human rights, whether individual or collective, economic, social and cultural or civil and political. Given the extent of violations of the right to a healthy environment, the international community expressed its profound concern, at the 1992 Earth Summit, noting that some international movements of toxic wastes were in contravention of national legislation and existing international instruments, seriously damaging the environment and public health in all countries, particularly the developing ones.

B. Violations of individual economic, social and cultural rights

98. Individual economic, social and cultural rights are essentially the right to work and the rights to adequate food, health, housing and education. There is no doubt that those rights rest on the most important right of all, namely, the right to life. They all revolve around and centre on that right, if by "life" is meant everything that contributes to the continued existence and improvement of the human condition. In the view of some people, these rights constitute an ideal to be achieved, i.e. they are not immediately claimable. This view is incorrect since these rights have a firm legal foundation and can be claimed at any moment and their violations punished.

1. Violations of the right to work

99. An International Labour Organization report, the World Labour Report 1995, explains that the employment situation in developing countries, particularly in sub-Saharan Africa, is determined by local market conditions which continue to discourage both domestic and foreign investment. The explanations provided by the Director-General of the International Labour Organization (ILO) are far from satisfactory, especially when he states that African countries should undertake major reforms. In my opinion, the explanation is rather to be found in the injustice and imbalance engendered by

the world economic order. The ILO report suggests that the only area where Africa has not been marginalized is that of aid. I think that the "aid" in question could easily be discontinued entirely if the world's wealth were distributed equitably among all nations.

100. Shortages or serious crises have inevitable consequences on the labour market with increasingly frequent recessions hampering the development of any policy aimed at improving the conditions of the worker and his family. Unemployment becomes a daily concern for the individual as well as for society and the search for work a priority. Workers and their families who are affected by job instability or insecurity are extremely vulnerable.

101. Workers also face serious risks in performing certain jobs which they are forced to accept because of the difficult economic situation. Nowadays, the ILO conventions prescribing workplace hygiene measures are never observed anywhere. This is a serious violation of the worker's rights. Migrant workers are certainly those most affected because of their clandestine recruitment and sometimes even of the complicity of the host State. Violations of the right to work take several forms, as noted by the Special Rapporteur in his second interim report on the realization of economic, social and cultural rights:

(a) Substantial falls in wage levels, with corresponding declines in living standards;

(b) Increased levels of unemployment;

(c) Reductions in worker protection in terms of occupational health and safety standards;

(d) Limitations on the right to strike;

(e) Weakened bargaining power of the working class; and

(f) Many violent social conflicts that can lead to serious political and economic crises.

These are the main consequences of violations of the right to work, though other less serious consequences can derive from them also.

2. The right to health

102. Health today gives cause for concern because it is precarious and accessible to only some privileged groups of people that are becoming fewer and rarer. In many countries, particularly developing ones, the health system consists of a few small islands in a sea of excluded people without access to health care in its most elementary form. For a very large part of the population, health care is inaccessible because of its cost. The spread of serious diseases, the ease of their propagation and the resistance being built up by their vectors should lead to greater solidarity between the rich and the poor, since the security of the rich lies in providing for the health needs of the poor. The continents have grown closer together and no disease or human suffering can be contained within a State's borders.

103. The cost of health care is weighing heavily on the savings of families and the economies of States, whether large or small, developed or developing. Medical treatment is as expensive as the medication needed to treat the illness diagnosed. This situation puts the minimum needed for health beyond the reach of the most disadvantaged segments of society, namely, workers and their families, children, women and the elderly. For these groups of human beings, the right to health is an inaccessible luxury.

104. This right to health should be understood as both an individual and a collective right and should be a constant concern of the international community, of States and of individuals. The international community should be more involved and cooperate more with States, in accordance with the Charter of the United Nations. To be successful, however, such cooperation requires a new balance in the world economic order and all its subsidiary systems. It is a well-known fact that 20 per cent of the world's population controls 80 per cent of the world's resources and technological benefits. This increasingly pronounced imbalance exposes the disadvantaged vulnerable groups and peoples of the third world to serious shortfalls in all areas, including health. The concentration of pharmaceutical industries and the means of combating serious contemporary diseases (such as AIDS) in the hands of a few industrialized countries prevents most of the world's population from benefiting from the scientific advances and discoveries of this century.

3. The right to adequate food

105. Putting an end to hunger and poverty, both present and future, is an old promise of the international community which was made after the Second World War. That promise has never been kept, nor has any serious effort ever really been made to keep it. The wealthy Powers preferred to embark on an insane and increasingly expensive arms race which geared their economies to military objectives and diverted funds from aid that could have helped the developing countries. It has been said that, if the arms-producing countries withheld 5 per cent of their military expenses and paid those funds out to the needy countries and peoples, the latter would be able to undertake, and probably to succeed in, launching their economic development, as long as the current economic order becomes fairer and more equitable, of course. Famine is rife in many countries and is now affecting people who were previously believed to be safe from it. Food shortages, compounded by burgeoning growth in world population, make the realization of the right to adequate food daily more remote.

106. Moreover, the pollution resulting from industrialization and the use of certain substances is leading to the destruction of all forms of animal and plant life and consequently of all sources of food. The reckless deforestation of some areas of the third world, which has not been accompanied by any reafforestation, has worsened the situation and has caused the desertification of arable land. The right to adequate food is not simply a matter of the abundance of food, but also of its quality. The struggle against the widespread increase in malnutrition among vulnerable groups is one way of working towards the realization of the right to adequate food. The rising costs of food, declining food security, lower production costs and cutbacks in public subsidies on basic foodstuffs are also obstacles to the realization of the right to adequate food. Nowadays, many families spend most if not all of their income on food.

107. Today, one person in every five never eats his fill and, far from improving, this situation is becoming worse in all countries, particularly in the third world. The scarcity and cost of foodstuffs are spreading to all parts of the world and are seriously endangering the right of every person to have a minimum amount of food to survive. Speculative dealings in foodstuffs of prime necessity by some national and international firms, especially with regard to importation and distribution, further frustrate all hope of securing everyone's right to a minimum of food.

4. The right to adequate housing

108. The right to adequate or decent housing is based on a set of norms related to the other rights of the individual and his environment. Implementation of this right is a contribution to a people's cultural life and provides the necessary harmony between man and his habitat. Realization of the right must thus take into account the cultural and social elements of the people concerned. Importing housing models is often, if not always, destructive of that harmony.

109. The housing crisis of past decades was, for many persons and peoples, the result of a disregard for the right to adequate housing. One United Nations document stated that the difficult economic situation of many countries in the early 1980s was reflected in a rapid decline in resources available for investments and related services in the field of human settlements. National housing subsidies, rent controls and housing loans have been steadily diminishing.

110. The extent of speculation on housing has meant that, for thousands of people, the right to be properly housed has been increasingly difficult to realize. Such speculation has furthermore facilitated the development of eviction procedures which take no account of the human right to housing. The absence of appropriate control by the public administration has deprived the right of all its content. In any case, it should be recalled that the public authorities themselves very often embark on the nationalization or expropriation of settled lands without providing any compensation to those affected. Examining all these failings and finding appropriate solutions will contribute to the realization of everyone's right to adequate housing.

5. The right to education

111. The right to education is increasingly difficult or even impossible to realize in many countries, especially in the third world. Like all economic rights, it requires a financial and material base which is not available to the greater part of the population. The right to education means that an individual has the possibility to receive education, to provide it for his children and to be free in the choice of that education. Violations of and disregard for the right to education take the form of insufficient schooling for children, a high proportion of school drop-outs and constantly declining rates of literacy. These practices are sometimes tantamount to a pure and simple negation of the right. The quality and standard of education is at present being seriously affected as a result of the shorter working hours, smaller numbers and diminishing skills of teachers.

112. A UNESCO study shows that, in the hundred least advanced countries, the education budget has been more than halved over 10 years. This reveals a clear lack of concern for education on the part of national authorities. Furthermore, the World Bank has shown very little regard for the difficulties surrounding the realization of the right to education by imposing harsh cuts in the educational budgets of developing countries. In many African countries the principle of free primary and even secondary education had in the past enabled many poor people to receive at least basic teaching. Now that this principle has been abandoned, education, which has become as expensive as health and housing, is out of the reach of the most deprived segments of the population.

113. The effective enjoyment by every individual of the right to education should be a constant concern of national and international institutions, whether private or public. In seeking such enjoyment, it should be borne in mind that the individual is not only the beneficiary but also the architect. Education must not be an instrument for the destruction of the culture of peoples or the social fabric. Literacy must be functional so that the individual is able to make use of it in carrying out his work, particularly in labouring and agricultural environments. Consequently, literacy courses must not be a simple teaching of the letters of an alphabet but must also be applicable to the recipient's vocational life.

C. Violations of the economic, social and cultural rights of vulnerable groups

114. The so-called vulnerable groups, which include children, women, migrant workers, the old and the poor, are undeniably the most exposed to and the most seriously affected by massive human rights violations. In a document entitled "Overall Socio-economic Perspective of the World Economy to the Year 2000", the United Nations comments that, as the overall economic prospects for Africa and Asia are unfavourable, with very slow or nil income growth, the incomes of the poor would not rise enough to eliminate poverty and undernutrition. The World Bank adds that 0.7 per cent of GDP, which would be equivalent to a 20 per cent income tax on the richest fifth of the world's population, would be sufficient to raise the income of all the poor in Africa to just above the poverty threshold. Of course, the advanced economies are also suffering from the current world economic crisis. They have been forced as a result to adopt drastic measures which have led to mass unemployment, inflation and real insecurity.

115. In some developed countries, particularly in Europe, restructuring and economic policies should be expressly aimed at improving the fate of deprived fringe groups such as invalids, migrants and the members of ethnic minorities, while ensuring a full participation by these groups in the economic, political and social life of the nation. It should be emphasized that the steps taken by the international financial institutions in the framework of their policies and programmes of action have had the major consequence of aggravating poverty and widening the gap between rich and poor.

116. The problems are still more severe in rural areas, where the failures of political and economic policies are more acutely felt. Thus, millions of people living in rural areas cross the threshold of absolute poverty every day. Poverty also affects the developed countries with liberal economies,

where all the sectors of the population which are unable to compete are pushed aside. All the economic, social and cultural rights of the poor are thus violated or simply disregarded without any effort being made to interrupt the process. In this case, the economic base is a constituent part of the individual's right. The same applies to women, old people and workers. It should be recalled that the United Nations and its specialized agencies have, with the participation of the Member States, prepared a series of international instruments aimed at combating and eliminating the ills suffered by these groups. Drafting a legal instrument is one thing, however, and applying it is another. The economic protection of vulnerable groups is an essential prerequisite for the realization of their economic rights. This obligation, for which the States and the international community are responsible, has often been and may long continue to be ignored in view of the lack of will on all sides.

IV. THE CAMPAIGN AGAINST IMPUNITY FOR PERPETRATORS OF VIOLATIONS OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

117. Organizing the campaign against impunity for perpetrators of violations of economic, social and cultural rights, if it is to have any effect, requires comprehensive, detailed and objective investigations. To this end, it will be useful to consult the analysis regarding impunity for perpetrators of violations of civil and political rights. As far as the violations of economic, social and cultural rights discussed in this report are concerned, there appear to be two types of action worth considering:

(a) Preventive action, including all political, economic, legislative and administrative measures aimed at eliminating all practices and all procedures conducive to violations of economic, social and cultural rights; and

(b) Repressive and/or remedial action, aimed at penalizing violations which have already been committed. Sanctions could take the form of a series of practical measures, such as restitution, indemnification, compensation, cancellation, reparation, reinstatement, etc.

118. Clearly, where economic, social and cultural rights are concerned, remedial sanctions are by far the most important and the most significant, which does not mean to say that the importance of repressive sanctions should be overlooked. Both types of sanctions respond to the need for justice required to satisfy public opinion and to achieve national reconciliation, where appropriate.

A. Prevention of violations of economic, social and cultural rights

119. The experience of several decades of efforts to realize economic, social and cultural rights has brought to light many difficulties related to the very nature of the rights concerned and to the specific character of the peoples and regions of the world which are their beneficiaries. While it is true that every people or region has its own specific character, the necessary interdependence between the different human rights must not be overlooked. Preventing the violation of these rights is a task which must be jointly undertaken by the States and the international community. It should also be

remembered that each State is responsible for drafting appropriate legislation and regulations and for implementing an economic and social policy allowing individuals and peoples to enjoy their economic, social and cultural rights.

120. The preventive measures being considered here are important and go some way towards offsetting the vagueness surrounding economic offences and the related sanctions. One doubt, as regards international law in particular, concerns the empirical means deployed. In this respect, there should be close cooperation among States and between them and the international community. Successful prevention of violations of economic, social, cultural, or of any other rights, is undoubtedly the ideal solution, though also the most difficult to achieve. It requires an effort to inform and re-educate public opinion and a more courageous political attitude on the part of the Governments of the States on whose territories violations of human rights are committed.

121. From an international point of view, it is worth recalling the now classic suggestion that a more coercive and more coherent legal framework should be set up to induce States to accept and carry out their obligations under international law, which now clearly provides for State responsibility. This recognition of State responsibility was further strengthened by the Brussels Convention of 25 May 1962 on the liability of operators of nuclear ships, the International Convention of 29 November 1969 on civil liability for oil pollution damage and the Vienna Convention of 29 November 1971 on the international liability for damage caused by space objects.

122. Recommendations on international cooperation for crime prevention and criminal justice in the context of development were adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Havana in August and September 1990. In those recommendations, Governments were urged to promulgate laws to combat transnational crime and illegal international transactions. It was mentioned that, since even legitimate enterprises, organizations and associations were sometimes involved in transnational criminal activities affecting national economies, Governments should adopt measures to control such activities. They should also collect information from various sources so as to have a solid basis for the detection and punishment of enterprises and organizations, their officials, or both, if they were involved in such activities. It was suggested that States should devise effective criminal legislation to combat the corrupt activities of public officials, which could hinder development and damage individuals or the entire nation.

123. In other words, in domestic law, all mechanisms and practices leading to violations of economic, social and cultural rights should be identified as punishable offences, giving entitlement to compensation. In its General Comment No. 3 (1990), the Committee on Economic, Social and Cultural Rights discussed the nature of States parties' obligations under article 2, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights and stated, inter alia, that the adoption of legislative measures was by no means exhaustive of the obligations of the States parties and that the phrase "by all appropriate means" should be given its full and natural meaning; such measures should include the provision of judicial remedies with respect to those rights. That means, incidentally that States should avoid any deliberately retrogressive measures in that regard.

124. At the international level, measures to prevent violations of economic, social and cultural rights are of many different kinds. Some of them could be drawn up by the United Nations in cooperation with the Member States, while others would be prepared by States in the framework of regional organizations. They could also result from an action by the specialized agencies of the United Nations system. Measures which could be taken by the United Nations include the preparation and adoption of an optional protocol to the International Covenant on Economic, Social and Cultural Rights, like the one already existing with regard to civil and political rights. It would be supported by the obligation on the part of States to report to the Committee on Economic, Social and Cultural Rights concerning measures taken for the effective enjoyment of these rights and the penalties applied to the perpetration of violations thereof. Although applying the procedures of an optional protocol would not give the Committee any jurisdictional authority, it would provide an opportunity through regular reports and individual communications to submit useful recommendations to the States parties and would make a major contribution to the campaign against impunity for violations of economic, social and cultural rights. Pending the establishment and functioning of such a procedure, it would be worthwhile encouraging the Committee on the Elimination of Racial Discrimination, the Human Rights Committee and the Working Group on Communications (1503 Procedure) to examine periodic reports by States and individual communications submitted to those United Nations bodies.

125. The international community should endeavour to rectify current deviations from the missions of the international financial institutions. In 1944, the Bretton Woods Conference agreed to set up two international financial institutions: the International Monetary Fund (IMF) and the World Bank. Article 1 of the IMF Articles of Agreement establishes six purposes for the Fund, one of them being to facilitate the expansion and balanced growth of international trade and thereby to contribute to the promotion and maintenance of high levels of employment and real income and to the development of productive resources. The international community must attempt to bring these institutions back to their initial purposes.

126. In the preparation of preventive measures against violations of economic, social and cultural rights, the non-governmental organizations could, within the framework of their information and popularization activities, help the campaign considerably by denouncing such violations and suggesting solutions. With regard more specifically to cultural wealth, it would be important and essential to prepare and have the States adopt a convention protecting the cultural wealth of peoples, to declare any traffic involving such wealth to be a crime against humanity and to ask States to elaborate domestic legislation protecting it.

B. Jurisdictional measures against impunity

127. Violations of economic, social and cultural rights give entitlement to a remedy for the damage they have caused. From the point of view of domestic legislation, such violations are offences and subject to two types of sanction, repressive and compensatory. Under its guarantee obligation, the State has to provide the necessary legal framework to safeguard the enjoyment of economic, social and cultural rights. States in general, as well as all

other subjects of law, must cease to accord only a programmatic value to economic, social and cultural rights. The best way of achieving this is to incorporate the international legal standards into domestic law, so that they can be invoked before the domestic authorities and courts.

128. If violations extend beyond domestic boundaries and affect several countries, the international responsibility of their perpetrators, whether individuals, human groups, companies, States or regional or international organizations, becomes engaged. There are thus two types of responsibility, national and international. It should be pointed out that these are not cumulative; they are complementary or supplementary. Thus, the international responsibility of a subject of law can be invoked only when no domestic remedy is available or if domestic remedies have been exhausted or are inadequate. The point here is to lay the foundations of the juridical status and justiciability of economic, social and cultural rights. A serious study of these two notions must be undertaken, for without them the legal reality of economic, social and cultural rights is utopian.

129. While, under domestic law, criminal law offences are dealt with under enforceable legislation, the same is not true in international law, where States freely decide their conduct. Thus, an international offence, as determined by international legal standards, is the result of an act or of conduct that is morally and legally imputable to a subject of international law. Punishment of an economic crime and remedying the damage it causes raise three questions: (a) Who is responsible for the offence or violation which is the source of the damage?; (b) Who is the victim of the resultant damage?; and (c) What forms of remedy are possible?

1. Who is responsible?

130. In many cases, those responsible for violations of economic, social and cultural rights and of the collective rights with an economic content such as the right to development or the right to a healthy environment, are sometimes international entities applying policies which constitute veritable sources of large-scale and serious violations of collective and individual rights in the countries with weak economies. At this level, the responsibility is collective. The most typical example is the case of debt management by the international financial institutions. Another example is the case of structural adjustment programmes whose consequences are disastrous for the economies of the developing countries. The responsibility of the international community is great with regard to these economic policies favouring the developed countries which widen daily the gap between rich and poor countries. The maintenance of the existing economic order with these injustices and its failure to adapt to today's economic realities, rectification of which has been constantly demanded but in vain, is also a responsibility of the international community. In the case of the violations which now form part of history, it is for the international community to undertake the necessary actions to remedy justly the harm done to the victim peoples. It should do so in cooperation with all the actors on the international stage.

131. The violations committed by the transnational corporations in their mainly transboundary activities do not come within the competence of a single State and, to prevent contradictions and inadequacies in the remedies and

sanctions decided upon by States individually or as a group, these violations should form the subject of special attention. The States and the international community should combine their efforts so as to contain such activities by the establishment of legal standards capable of achieving that objective. The same is true of the looting of the cultural heritage of the third-world peoples and countries. Until quite recently, only States were subject of international law but individuals and groups of individuals can now take legal action or be summoned before international authorities to answer for their activities. The international community must establish a legal framework which will make it possible to bring actions, with some hope of success, for redress or punishment, a framework that would be supplemented by the principle of universal jurisdiction. To meet this responsibility more effectively, the international community must obtain from the States the commitment to include in their domestic legal systems international standards concerning human rights as a whole, while respecting their international obligations.

132. Under both domestic and international law, an act violating the rights of an individual or a group renders the perpetrator responsible. The juridical acts that give rise to obligations entailing the responsibility of a subject of law (an individual or a State) are specified by law. It is true that State responsibility is indisputable in positive law. It has, in fact, gained recognition, however belatedly, in the domestic sphere, where it had long seemed virtually incompatible with the lopsided relationship between the State and its subjects. The modern State engages in activities, some of which are government acts connected directly with the exercise of sovereignty while others are management activities carried out exactly like private activities subject to the rules of private law. In all cases, the responsibility of the State can be engaged in the event of violation of the rights of an individual or a group. Economic, social and cultural rights are generally connected with an economic activity and it is in this framework that they are most often violated.

133. The responsibility of the State is entire when the violations result from the malfunctioning of the civil service, whatever be the cause. The State cannot invoke either its own legislation or the incompetence or disobedience of its agents to exonerate it from its responsibility, whether the actions in question are government ones or purely managerial. In connection with the behaviour of State agents, abundant case-law from the Nürnberg International Tribunal that neither disobedience to or the execution of a clearly unlawful order reduces in any way the responsibility of the State. An occupying Power is responsible, under the Geneva Conventions, for violations committed in the occupied territory. The implementation of such responsibilities requires a certain amount of cooperation between States and the international community.

134. Violations of economic, social and cultural rights can also be perpetrated by private individuals. In the vast majority of States, such violations are punishable offences or are, at any rate, subject to a procedure of civil compensation. It is for the State to devise an adequate legal framework. It is most reprehensible that certain States should establish legislation which protect the goods or property of certain national companies and give them total impunity for any violations they commit of the economic,

social and cultural rights of citizens or private economic groupings. Thus, in some countries, there is no means of obtaining execution on the property of nationalized companies. There can be no attachment of any of their goods although, in more and more cases, they are acting like private companies or individuals.

2. Who is the victim?

135. The victims or passive subjects of violations of economic, social and cultural rights can be groups or individuals. International human rights rules are said to create obligations erga omnes by reason of the indivisibility of the thing which is protected. To obtain a clearer idea of the concept of victim, it is worthwhile referring to the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. States are not always interested in protecting human rights in the individual sense. They are more sensitive to the protection of rights which are more fundamental than humanitarian. They generally undertake to enable individuals to avail themselves of mechanisms which monitor their rights, as is the case for civil and political rights.

136. "Victims", according to the Declaration, means "persons who, individually or collectively, have suffered harm, including physical or mental injury ... or substantial impairment of their fundamental rights". In this case, the victims are those who have directly and personally suffered the harm arising from the violations. Another, broader, approach is to understand by victim anyone who can prove that he has suffered harm or has an interest in taking action. The injury for which reparation is requested may be material or moral. All national legislations have long accepted compensation for moral injury, both for the direct victim and for his heirs. In the international sphere, this idea would seem to be slowly but surely gaining acceptance. It may be inferred from the current case law of the international legal bodies that the basis for determining the amount and nature of the compensation is not solely the physical or material injury or damage but also the direct or indirect moral injury. In its observations on communication No. 107/1981, the Human Rights Committee stated that the mother of a disappeared person was herself a victim: "The Committee understands the anguish and stress caused to the mother by the disappearance of her daughter and by the continuing uncertainty concerning her fate and whereabouts ... In these respects, she too is a victim of the violations of the Covenant suffered by her daughter ...". Other international bodies, such as the Committee on the Elimination of Racial Discrimination, the Commission of Inquiry set up by the International Labour Organization and the European Court of Human Rights, have all confirmed the principle of compensation for moral injury. In view of the massive and systematic violations of which the third-world peoples have been victims in the recent past, such as slavery, colonization and cultural looting, it is obvious that there could only be a global remedy, the purpose of which is to re-establish these peoples in their communal rights by returning to them the goods of which they have been unlawfully dispossessed. These collective claims can be managed and successfully concluded only with the cooperation of the international community and the manifestation of the will of every actor on the international stage.

137. The status of victim and the rights attaching thereto are transmissible to the successors. This concept of successor should be understood in a wide sense and comprise, in addition to the direct victim and his heirs and assigns, legal entities whose purpose is to defend the economic rights of individuals or groups whose rights have been violated. This is the case of trade unions and could be that of non-governmental organizations. As regards trade unions, the case-law of the European Court of Human Rights has already enshrined the principle by enabling them to submit to it for consideration a collective labour conflict. In economic matters, the victims are often groups of people since the rights violated are often collective ones that affect large segments of the population. This in no way extenuates individual violations of economic, social and cultural rights. The many different forms of violation require different kinds of penalties, mainly of an economic nature as mentioned above.

3. Possible remedies

138. The State has the obligation to establish the necessary legal framework to punish violations of economic, social and cultural rights in accordance with the provisions of the international instruments mentioned above. This idea is summarized in the decision handed down by the Inter-American Court of Human Rights in the Velásquez Rodríguez case:

> "The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation."

139. The remedies for damage resulting from violations of economic, social and cultural rights will vary according to whether the rights violated are collective or individual. In the case of collective rights, the penalties must be of an essentially reparative nature. Thus, for example, compensation in the form of cancellation of debt and debt-servicing could partly repair the injury caused by slavery and colonization. As already pointed out, there are numerous historical and legal reasons to justify, in a great many cases, cancelling and in others renegotiating debt on more satisfactory terms, periods of repayment, grace periods and rates of interest. The question of debt has consistently been raised by the developing countries. Indeed, cancellation of the debt of formerly colonized countries was raised as long ago as the second session of the United Nations Conference on Trade and Development, held at New Delhi. Mr. Louis Nègre, the then Minister of Finance of Mali, made the following statement:

> "Many countries could legitimately have contested the legal validity of debts contracted under the auspices of foreign Powers. Beyond purely legal considerations and rightful claims, we merely wish to ask the creditor countries to show a greater spirit of equity or even justice by proposing, as a test of their goodwill, the cancellation of all debts contracted during the colonial period by interests that were essentially not our own, and for whose servicing our States are unjustly responsible."

140. History has shown that the huge present-day inequalities between developed and poor countries are the result of centuries of plundering and exploitation during which civilizations, social structures and indigenous modes of production were destroyed and during which the ecosystems of Africa, America and Asia were pillaged. The spoliation of many countries and the impoverishment of large segments of the population are continuing in different forms: deterioration of the terms of trade, transfer of resources from the South to the North, capital flight, structural adjustment, etc. As for cultural goods and those illegally acquired during the period of apartheid, the adequate form of remedy is restitution where this is possible. Those who have been illegally dispossessed must be able to retrieve their full property and cultural goods must be given back to the peoples who are their genuine owners.

141. As for the violations of individual rights, the harm they have caused can be remedied in several ways such as rehiring (in matter of employment), compensation, rehabilitation, ending the violations, etc. These actions presuppose the existence of a useful and effective system of recourse to the national courts and administrative authorities. In the final analysis, it is most important that the victims, whatever the form of remedy sought, should obtain satisfaction in accordance with the legal provisions in force. Recourse proceedings, though not a remedy in themselves, make it possible to achieve a remedy. That is why the State must, in the framework of its legislation, provide the legal regime for these remedies.

V. SUGGESTIONS AND RECOMMENDATIONS

A. Suggestions

142. At the present stage of efforts to combat impunity for perpetrators of violations of economic, social and cultural rights, the following suggestions may be made:

(a) In view of the massive violations of the economic, social and cultural rights of countries and peoples that were colonized or subjected to slavery, and as compensation for the injury suffered, part of the debt and debt-servicing of the States concerned could be cancelled; where appropriate, the remaining part could then be renegotiated on fairer and more humane terms. This approach would make it possible to eliminate several sources of violations of economic, social and cultural rights;

(b) Violations of economic, social and cultural rights could be declared international crimes that are consequently subject to the principles of universal jurisdiction and imprescriptibility, so that they can be punished at any time and in any place. Reforms of the present domestic and international legal systems could be proposed to States and international institutions in order to lead them to perform the mission of guaranteeing and protecting economic, social and cultural rights;

(c) An optional protocol on economic, social and cultural rights, similar to that for civil and political rights, could be drawn up and adopted by States, which would thus be required to report on the measures taken or to be taken for genuine implementation and improved protection of economic, social and cultural rights;

(d) The international community, international institutions, States and non-governmental organizations should, as a matter of priority, endeavour to ensure that States which have not yet done so ratify the International Labour Organization conventions and recommendations concerning the right to work, the right to social security and the right to secure and stable employment, thereby providing workers and their families with conditions for a decent life. The international community and States should take all the necessary measures to protect the rights of vulnerable segments of the population and give very serious consideration to holding a large-scale discussion on the practice of embargoes and economic sanctions which are imposed on States and have adverse consequences for the realization of the economic, social and cultural rights of the segments concerned;

(e) More elaborate standards could be proposed to States to combat impunity in cases of corruption, misappropriation of public or private funds, abuse of trust by public officials, and tax and customs fraud and, lastly, efforts to combat them could be strengthened and greater consideration given to the harm suffered by the victims, whether States or individuals; and

(f) Machinery for monitoring the management of public affairs could be established and constantly improved by providing material and financial assistance to States requesting it, helping them in particular to identify and study the mechanisms which permit, facilitate or ensure impunity for perpetrators of violations of economic, social and cultural rights.

B. Recommendations

143. The Special Rapporteur wishes to make the following recommendations:

(a) A periodic high-level meeting should be organized to stimulate broad discussion of the question of the impunity of perpetrators of violations of economic, social and cultural rights, in association with institutions affiliated to the United Nations, such as the United Nations Educational, Scientific and Cultural Organization, the International Labour Organization, the International Monetary Fund and the World Health Organization. Such a meeting could lead to a greater awareness on the part of the international community and States with a view not only to according these rights a greater juridical value and to punishing violations thereof, but also to creating rules in domestic law that will ensure their juridical status and justiciability;

(b) Non-governmental organizations should be encouraged to create a body for monitoring implementation and protection of the economic and social rights of the human person. This will enable the international community to improve supervision of respect for these rights by States and other human groups.

UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1997/9
30 June 1997

ENGLISH
Original: ENGLISH/SPANISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-ninth session
Item 4 of the provisional agenda

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The relationship between the enjoyment of human rights, in particular economic, social and cultural rights, and income distribution

Final report prepared by Mr José Bengoa,
Special Rapporteur 1/

1/ The Sub-Commission, in paragraph 7 of its resolution 1996/26, inter alia, requested the Secretary-General to invite Governments, United Nations bodies, the specialized agencies and intergovernmental and nongovernmental organizations to provide the Special Rapporteur with information relevant to the preparation of his report. In order to satisfy this request the Secretary-General sent a note verbale and a letter on 3 March 1997. The Governments of the following countries replied to the note verbale: Cyprus; Jamaica; Philippines; United Kingdom of Great Britain and Northern Ireland; United States of America. The following United Nations bodies replied to the letter of the Secretary-General: United Nations Environment Programme; Administrative Committee on Coordination; Centre for Disarmament Affairs; Department for Development Support and Management Services; Department for Economic and Social Information and Policy Analysis; Department of Humanitarian Affairs; Department of Public Information; International Research and Training Institute for the Advancement of Women; United Nations Children's Fund; United Nations Conference on Trade and Development; United Nations University. The following specialized agencies replied to the letter: International Maritime Organization; International Monetary Fund; International Labour Organisation; United Nations Educational, Scientific and Cultural Organization; United Nations Industrial Development Organization; World Bank; World Meteorological Organization. The following intergovernmental organizations replied to the letter: Commonwealth Secretariat; European Commission on Human Rights. The following nongovernmental organizations replied to the letter: International Confederation of Free Trade Unions; Foodfirst Information and Action Network (FIAN); Pax Romana. The Economic Commission for Latin America and the Caribbean (ECLAC) supplied us with much material on this subject. In the course of his work support and

(continued...)

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collaboration were received by the Special Rapporteur from many nongovernmental organizations, especially the World University Service, the Centre Europe-Tiers Monde in Geneva, the American Association of Jurists, the International Association of Democratic Lawyers, and the SUR Centre for Social Studies in Santiago de Chile, which provided support for the preparation of the statistical data and the necessary working time for these studies to be carried out. The Special Rapporteur also received support from the Secretariat of the Centre for Human Rights, through Mr. Luca Lupoli and Mr. John Pace, Head of the Research and Right to Development Branch. In the preparation of this final report library support and adequate time for research were also given at Indiana University, Bloomington, Centre for Latin American and Caribbean Studies, and support was received from the Fulbright Commission.

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INTRODUCTION

A. Purpose of the report

1. Growing inequality in the distribution of wealth and poverty are the principal social problems affecting the economic development of the contemporary world at the close of the century. The world economy is in a new cycle of expansion, generally recognized as a new wave of "globalization" of the economy. This process of expansion is rapidly transforming all societies, both developed and underdeveloped, reordering the markets for labour, goods and services, affecting mass consumption and the customs and daily lives of millions of human beings. Production activities are tending to be moved, or "delocated", as a consequence of the pursuit of greater levels of gains. Enterprises are downsizing 2/, and work of good quality is being replaced by work in service sectors which produces neither sufficient income nor job satisfaction for those who do it. In this process of globalization many people perceive that new and growing inequities are being produced within countries and between the countries and regions of the world. There is growing realization of this and very little capacity to respond or find alternative ways to reorient these increasingly pronounced trends. Paradoxically, the end of the century will be characterized by an expansion in the goods at the disposal of the economy and a growing degree of dissatisfaction with the use that is being made of these goods.

2. Is it relevant to examine the economy, income distribution and poverty from the standpoint of human rights? Is it valid for the human rights system to raise issues in the world of economics, or are these two radically differentiated spheres? This has been the core of debate in the three years of this Special Rapporteur's work on the relationship between human rights and income distribution at both international and national levels.

3. In the last few years a growing interest has been perceived, among economists as well as social leaders and politicians, in understanding the effects and impacts of economic measures on social life, on politics, and especially on culture, human beings and their values. There is a growing perception that the way in which wealth (and poverty) are distributed within a society, or between different societies, fundamentally affects the values, social coexistence and life in common among people. Income distribution has effects in the first place on the economy and economic growth, but at the same time, in a deeper way, has moral, social and ethical implications. Societies are being deeply moved by the maldistribution of income. Internal rifts are occurring within them and forming seeds of violence, hatred and rancour. 3/

2/ The term "downsizing" has been coined to denote the changing size of enterprises, outsourcing of their secondary production processes and services and internal organizational adjustments.

3/ "Ideological fashion and real modernity are no longer as only a few years ago an ultraliberalism that would get rid of all regulation by the State or wild capitalism only able to restructure enterprises through brutal and repeated rounds of mass redundancies... For merely cynical reasons which have nothing to do with morality, or solidarity, or ideology, the experts became

(continued...)

Social life has deteriorated in spite of the global increase in wealth. People are perceiving that instead of improving, their living conditions are getting worse.

4. Human rights, as a code of values juridically accepted at the international level, can legitimately signal the ethically acceptable or unacceptable limits of economic policy measures and economic functioning. The human rights system has the legal obligation to observe the economic system and to signal the greater or lesser impact it is having in meeting the needs of individual human beings and on their enjoyment of essential civil, economic, social, political and cultural rights.

B. Background to the study

5. The rights of people to enjoyment of fair and decent economic conditions are enshrined in all instruments of international law, starting with the Universal Declaration of Human Rights. These rights are clearly set out especially in the international covenants and documents adopted by countries at the international and regional levels. Hence a consensus has increasingly been reached that poor income distribution and its accompanying effects of destitution and poverty constitute a permanent violation of individual human rights.

6. The Universal Declaration of Human Rights devoted its article 23 to, inter alia, the right to work, the right to just and favourable conditions of work, the right to equal pay for equal work and the right to just and favourable remuneration. It should also be recalled that the General Conference of the International Labour Organization adopted, at its thirty-fourth session, Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value. Like the Universal Declaration, The International Covenant on Economic, Social and Cultural Rights contains several provisions concerning the economic development of peoples and individuals. Article 6 on the right to work, article 7 on just and favourable conditions of work, article 8 on the right to form and join trade unions, article 9 on the right to social security and, in particular, article 11 on the right to an adequate standard of living, can be directly related to income distribution. Finally, the Declaration on the Right to Development provides, in its article 8.1, that States should undertake, at national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income.

7. The activities related to economic and social rights, and especially the right to fair distribution of income, cannot be considered at the national level

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alarmed as they calculated the social costs of economic or financial reforms. Fashionable modernity today consists in absorbing the social costs of restructuring in order to prevent outbreaks of strikes and unrest or a deterioration of the social fabric where the poor and the rich feel they do not belong to the same nation". Jean Daniel, Director of the weekly Nouvel Observateur, translated in El País, 30 May 1997.

exclusively. In this connection, the requirement foreseen in the Universal Declaration, in its article 28, of an international order in which human rights for all can be fully realized, should be evoked. Likewise, the Declaration on the Right to Development provides, in its article 3, that States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development and that States have the duty to cooperate with each other in ensuring development and eliminating obstacles to development. Moreover, in article 4, the Declaration provides that States have the duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development.

8. The final report which we here present analyses the economic data from the standpoint of these juridical principles fully endorsed by and applicable in the international community. These principles established in international documents constitute the theoretical background for analysis of income distribution and human rights.

C. Mandate of the Sub-Commission

9. In this spirit, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, deeply alarmed at the widening gap between the rich and the poor, adopted resolution 1993/40 in which it entrusted Mr. A. Eide with the task of producing a preparatory document on the relationship between the enjoyment of human rights, in particular economic, social and cultural rights, and income distribution, at both national and international levels. The resolution of the Sub-Commission was endorsed by Commission on Human Rights resolution 1994/20. As requested, Mr. Eide submitted his document (E/CN.4/Sub/1994/21) at the forty-sixth session of the Sub-Commission in 1994.

10. In the beginning of his report, Mr. Eide clarified that the term "income distribution" was used in a neutral sense, as a measurement of the way in which income is distributed in a given society. Noting that the current, severe maldistribution of income prevents millions from enjoying economic and social rights and that gross inequalities prevent social harmony, Mr. Eide added that the focus of his report was rather on the impact of different structures of international and national income distribution on human rights. In the last part of the report, Mr. Eide noted that:

> "It is generally recognized and has been repeatedly stated in the studies and reports quoted in this preparatory document that what should be achieved is greater equality of opportunity, not necessarily equality of outcome. Equality of opportunity means the provision of equal chances, from the outset of life, for human beings to manage their own future, and of arrangements to eliminate the negative consequences of accidental misfortune, such as serious illness, disability and structural unemployment... (para 91)."

11. Elsewhere in the document Mr. Eide presented a review of selected international instruments, studies addressing income distribution, the work of the Working Group on the Right to Development, relevant United Nations reports, the activities of the international financial institutions and the context at that time.

12. With the work of Mr. Eide in mind, the Sub-Commission on Prevention of Discrimination and Protection of Minorities decided, in its resolution 1994/40, subsequently endorsed by Commission on Human Rights decision 1995/105, to appoint Mr. José Bengoa as Special Rapporteur on the relationship between the enjoyment of human rights, in particular economic, social and cultural rights, both at national and international levels, and income distribution. The Special Rapporteur was requested to take into account, in particular, the previous reports on extreme poverty, the right to education and matters related to the right to development. In its decision 1995/105, the Commission also approved the request to the Special Rapporteur to submit a preliminary report to the Sub-Commission at its forty-seventh session, a progress report at its forty-eighth session and a final report at its forty-ninth session. The present report is therefore submitted in compliance with the Commission's decision 1995/105.

D. Brief review of the previous reports on income distribution and human rights

13. In the preliminary report (E/CN.4/Sub.2/1995/14) to the Sub-Commission, the Special Rapporteur underlined that income distribution, both internationally and nationally, was the principal indicator of social integration and of the fulfilment of minimum requirements in respect of economic, social and cultural rights, enabling human beings to live in society. The object of this first report, presented in August 1995, was to analyse the relationship between economic, social and cultural rights, income distribution, and equality of opportunities. It was argued that it was necessary to rethink economic, social and cultural rights in an increasingly globalized and intercommunicating world. It was asserted that greater communication between societies would bring growing homogenization of accepted and acceptable "standards" and levels of realization of human rights in general and of economic, social and cultural rights in particular. The first report also contained the guidelines for the future work: (a) analysis of the various forms of economic, political, social and cultural discrimination; (b) analysis of the causes of the gap between rich and poor countries in relation to income distribution; (c) the development of indicators enabling a more detailed analysis of income distribution at the national level; and (d) the search for means of determining how most effectively to strengthen activities in respect of the realization of economic, social and cultural rights. In addition to these elements, the Special Rapporteur willingly endorsed the request of the Sub-Commission to devote special attention to matters related to extreme poverty, the right to development and the right to education.

14. At the forty-eighth session of the Sub-Commission in 1996, the Special Rapporteur presented a progress report (E/CN.4/Sub.2/1996/14) which was divided into five parts. In the Introduction, the report stated that income distribution was an appropriate indicator of the degree of equity or lack of it in a society and of the presence or absence of opportunities within a sector of the population or a geographical area. It was a tool for monitoring the fulfilment of human rights. Part one of the report analysed the issues of income distribution at the international level, and international cooperation and the gap between rich and poor countries. Part two elaborated the issue of income distribution at the national level and included some comparative analysis. Part three investigated the relationship between education, discrimination and income distribution. In this second report, presented in

August 1996, an attempt was made to operationalize the concepts of income distribution by presenting data and elaborating an indicator to permit fuller and more complex understanding of the phenomenon. The main objective was to establish different types of income distribution in different types of countries and conditions of development and to relate the question of income distribution, both theoretically and statistically, to poverty. This second report gave an important empirical basis for realization of the analysis in the third report.

15. In the conclusion, the report expanded upon the concept of "equal opportunities" which permits a practical understanding of the relationship between the phenomenon of discrimination and the rights of individuals. In this connection, the Special Rapporteur stated that:

> "...The absence of equal opportunities leads to manifest discrimination and a violation of the rights of individuals. Negative income distribution is one of the forms taken by the lack of equal opportunities, both internationally and nationally" (para. 34).
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> "...An equal opportunities policy should involve adequate and additional measures to ensure that the group or sector suffering from discrimination enjoys conditions similar to those of the rest of the population... This duty lies with the State, and this is fully stipulated in international instruments" (para. 36).
>
> "...In the sphere of international cooperation, there is a need for the clearer application of the concept of 'equal opportunities'. In many cases international cooperation has been paternalistic in nature, aims at solving a small or large passing problem, but does not tackle the underlying causes..." (para. 38).

16. The object of this third report is to relate the process of globalization of the economy and societies that is occurring at the end of the XX century with the concomitant phenomena of inequity in the distribution of wealth and sharp increases in the phenomenon of poverty. The final objective of the report is to signal the challenges to the human rights system posed by the process of globalization, especially in the field of economic, social and cultural rights.

E. Definitions and perspectives of the report

17. The distribution of wealth in societies can be understood in many modes and manners. The form of distribution of land ownership, for example of agricultural land, was for a long time one of the main criteria for understanding equity or inequity in a given society. Income distribution in agrarian or traditional societies should be analysed principally by the way in which ownership is distributed, and, consequently, by the use of systems of personal services. 4/ In modern societies, especially at the end of the last

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4/ It is for this reason that the indicator of monetary income distribution normally used in national accounts systems and which we employ here is not appropriate for these types of societies. When there are precapitalist systems with a broad range of "personal services" (incomes in labour, in kind,

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century, it was considered that "ownership of the means of production" was the principal phenomenon and that it affected all aspects of social life and culture. Today it is not uncommonly considered that the most important factor is the way in which cultural goods, knowledge and information are distributed, and the informal networks of relationships between people. Obviously these discussions are absolutely beyond the practical scope of a study on income distribution and human rights. It is for this reason that a definition permitting a much more neutral and operational understanding of the concept has been adopted. By income distribution at the international level we mean the way in which the overall product (the sum of physical production, services and trade) is distributed between the countries of a region or a group of selected countries. Income distribution at the national level in a given society would consist in the way in which the overall product produced by the national economy within a year is distributed between the households that comprise and compose that society. Accumulated capital, properties and knowledge acquired are only taken into account in this operational definition in so far as they represent actual income for the families or households that constitute the unit of analysis.

18. The method of understanding distribution and income at the international level consists simply in comparing a country's annual product with the global product of the region or group of countries in question. At the national level household incomes will determine how the national product is distributed internally. This operational method, used by consensus to measure income distribution, obviously has many limitations in that it does not account for a large number of production, trading and service activities that are not included in the "national accounts" or "household accounts". Semilegal, clandestine or simply illegal and criminal lucrative activities remain outside these accounting systems and in some cases represent substantial shares of the income of both countries and individuals. Some maintain that household income accounting is simpler at the lowest income levels, while at the higher levels it is more difficult because of the complexity and tax avoidance. Thus there are many methodologists who maintain that all income distribution figures are thereby devalued and should be still more concentrated. 5/

4/(...continued)
and concealed systems of labour contracting) it is not possible to measure with these indicators.

5/ There is an important distinction in some countries between income distribution "before tax" and "after tax". This is only valid in the countries that have developed discipline over a long period in the payment of direct taxes; this, as we know, is very poor in some third world countries and the tax avoidance regime is very high. On the theory and methodology of income distribution, see two recent compilations that give a picture of the current state of discussion of these questions: Vania Boroah, Growth, Unemployment, Distribution and Government: Essays on Current Economic Issues. New York, Saint Martin Press, 1996 and The Distribution of Economic Welfare in the 1980s, Peter Gottschalk, Bjorn A Gustaffson and Edward Palmer (eds.), Cambridge (England) and New York, Cambridge University Press, 1997. A review of economic theories on the subject in: Gordon Tullock, Economics of Income Distribution, Boston,
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19. This operational manner of conceptualizing distribution enables it to be understood whether income is more or less concentrated in a society. The population, the indicator most often used, is divided for this purpose into five quintiles (20% of the population) and various comparisons are made between them. The most common is comparison of the top quintile with the bottom quintile. Because of its neutral and relatively objective nature, most specialists regard this as "a good indicator of equity" and it is currently the one most widely used. 6/ Because of its non-value and neutral character, it is a "relative indicator" valid only for comparative analyses. This indicator is best used with historical series in the same country. Hence it is not possible to say what is the "ideal income distribution", since this will depend on the type of society, the nature of its historical development, and a very complex series of factors.

20. While it is not possible to determine "ideal" income distribution, it is possible to signal when situations are occurring where the high concentration of wealth in a few hands is producing devastating social effects with consequences so serious as to threaten the "social integration" of the society in question, or at the international level, the balance of a given region. 7/ "Intolerable

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5/(...continued)
Kluwer Academic, 1997. References and studies on income distribution in the United States of America have increased in recent years showing the importance this subject has acquired: Herman P. Miller, Income Distribution in the United States. Prepared for and in cooperation with the Social Science Research Council, Washington, U.S. Department of Commerce, Bureau of the Census, 1966. Although the same household methodology is applied, figures are given on more complex aspects which cannot be dealt with in this general report. See a critical study in: Sheldon Danzinger and Peter Gottschalk, America Unequal, New York, Russell Sage Foundation, Cambridge, Harvard University Press, 1995 and in: Joel Nelson, Post-industrial Capitalism: Exploring Economic Inequality in America, Thousand Oaks Sage Publications, 1995; Poverty, Inequality, and the Future of Social Policy: Western States in the New World Order, Katherine McFate, Roger Lawson and William Julius Wilson (eds.), New York, Russell Sage Foundation, 1995. The subject of income distribution is closely linked with poverty and changes in social policies, see discussions in the American Congress in: "Recent changes in the poverty rate and distribution of income". Hearing before the Subcommittee on Human Resources of the Committee on Ways and Means, United States House of Representatives, One Hundred Second Congress, Second Session, 10 September 1992, Washington.

6/ In economics the "Gini coefficient" is used, a mathematical indicator of dispersal that is much more precise than the 20:20 ratio, but more difficult to read for the non-specialized general public. See World Bank, World Development Indicators, 1997, p.54 et seq.

7/ Professor Johan Galtung presents, as he says, "a provocative and pessimistic picture of the human condition at the end of the twentieth century", seeing that many societies are in the processes of becoming destructured and decultured which he calls "atomie" and "anomie". He proposes a model to understand the processes of rupture and disintegration occurring as consequences

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levels of income inequality" 8/ would arise if there were systematic growth of inequity in a society (or at the international level) with a crude concentration of product in the hands of one group or sector of society. From a human rights perspective, it is generally felt that this would entail violation of the economic, social and cultural rights of the population, incurring permanent discrimination and violation of the fundamental rights of individuals.

21. The overall body of codified documents on human rights is thus the best criterion by which to determine when an economic situation becomes a situation of permanent and persistent violation of the rights of individuals, of their economic, social and cultural rights. Both in theory and in practice, it is possible to establish a distinction between economic behaviour and its evaluation in the perspective of human rights. A particular economy could show positive macroeconomic indicators, for example, growth, inflation, national accounts, exports, etc., notwithstanding the existence within it of "intolerable levels of income inequality", very high degrees of discrimination, social exclusion, and poverty. The rights of individuals established in codified human rights documents thus constitute the only general criterion for the establishment of minimum acceptable or unacceptable standards in economic and social matters at the national and international levels.

22. Income distribution in a society is directly related to existing levels of poverty. This question was analysed in detail in the second report. There are societies in which poverty is generalized and indicators of income distribution, as is logical, show figures of low concentration. In these societies of an agrarian nature, the income indicator is not sufficiently appropriate to cover the concentration of agricultural ownership, and inequality in matters not directly connected with the distribution of product through systems of monetary income. 9/ In the industrialized and industrializing societies, however, income concentration always brings relative poverty in the lower group or

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of economic readjustments and maladjustments. See: Johan Galtung, "On the social costs of modernization, social disintegration, atomie/anomie and social development" in Development and Change, vol. 27, pp. 379-413. Oxford, Institute of Social Studies, Blackwell Publishers, 1996.

8/ Eide Report, E/CN.4/Sub.2/1994/21, para. 21.

9/ This is usually a fallacious argument brought out to support the claim that there is no direct relationship between income distribution and poverty. Taken to the absurd, it could be argued that while primitive societies are very poor they are also very egalitarian. No-one with an adequate sense of history finds it strange to realize that inequity of incomes is a substantial part of the development of modern and industrial societies. Nowhere in this report will a "romantic" and naïve vision of equality and inequality be found. We agree with Galbraith when he says that in order to talk of inequality and equality it is necessary to be clear that absolute economic equality does not exist and is not desirable and that it is not sound anthropology to make a critique of inequality and poverty from the supposedly romantic viewpoint of "total equity". See John K. Galbraith, The Good Society: The Humane Agenda. Houghton Mifflin Company, Boston, 1996, p. 60.

groups. It has been shown statistically that when there are very sharp increases in income concentration and inequality, immediate outbreaks of poverty occur. This is what has happened in many of the developed countries in the last decade as a consequence of adjustment processes and cutbacks in social programmes. 10/ Income concentration leaves one sector of society in a relatively defenceless situation and thus in growing conditions of poverty. Very often these are the same people as the groups subject to most discrimination in societies, either by reason of their sex (women heads of households), age (old people and children), ethnic group (migrants, indigenous peoples and minorities), race or other derived forms of discrimination such as education. Poverty and destitution are understood in this report as phenomena related and in some cases concomitant with poor international and national income distribution.

I. GLOBALIZATION AND INCOME DISTRIBUTION

23. Economic, social and cultural rights should be discussed against the background of the processes of globalization that have been occurring in the world in the last ten years. This is both a theoretical and political challenge as these rights were formulated in a context that was totally different economically and above all politically: the post-war period, the cold war, the existence of a socialist bloc and of competitive capitalism based on strong nation states. Present-day trends in economics and society worldwide are entirely different and require a rethinking of economic, social and cultural rights. As well as postulating their juridical validity and applicability, we therefore signal the need to relocate these rights in the current processes of change.

A. "Globalization" at the periphery and concentration in centres

24. It is a commonplace to say that the dominant process in the world today is "globalization". There has been a fantastic increase in world trade in the last few years as a consequence of the economic opening of countries with centrally planned economies and third world countries, and the growth of communications. Nevertheless, the concept of "globalization" takes on different meanings depending on the country's position in the world. What for some countries on the periphery of world capitalism is an opening and acquisition of new economic, social and cultural models, is for others, in the centres of world capitalism, the reaffirmation and export of their own economic, social, political and cultural values. The same word, used in different places, acquires radically different meanings. We therefore believe it necessary to spell out the concept of globalization. The sociologist Anthony Guiddens writes:

> "The word globalization appears almost everywhere these days but thus far has not been well conceptualized. As I would understand it here, globalization does not simply refer to the intensifying of world economic competition. Globalization implies a complicated set of processes

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10/ See a detailed analysis for Europe in: "Europe united or divided?", in: York Bradshaw and Michael Wallace, Global Inequalities, Indiana University, Pine Forge Press, 1996, p. 121 et seq.

operating in several arenas besides the economic. If one wanted to take a technological fix upon the intensifying of globalization in recent years, it would be the point at which a global satellite communication system was first established. From that point onwards instantaneous communication became possible from any part of the globe to any other. The advent of instantaneous communication both altered the nature of local experience and served to establish novel institutions. The creation of twenty-four-hour money markets, for instance, a phenomenon that has an impact upon almost all the world's population, became possible only because of the immediacy of satellite communication.

"Globalization is not just an 'out there' phenomenon. It refers not only to the emergence of large-scale world systems, but to transformations in the very texture of everyday life. It is an 'in here' phenomenon, affecting even intimacies of personal identity. To live in a world where the image of Nelson Mandela is more familiar than the face of one's next door neighbour is to move in quite different contexts of social action from those that prevailed previously". 11/

25. Globalization is thus a cultural phenomenon that is bringing different national and local communities closer and establishing new standards or expectations among populations. Inequalities at the local level are compared, analysed and observed on all sides, at least on television screens and increasingly on Internet terminals. Certainly this simultaneity in the cognizance of events, mass dissemination of practices and customs, and homogenization of consumption do not prevent commission of the most brutal violations of individual human rights. Before the astonished eyes of a silent public, we have in recent years been able to "see" the gravest violations of the right to life for ethnic and racial motives, death from hunger in atrocious conditions of thousands upon thousands of children and people of all ages, in short, atrocities that in the old world with less intercommunication only came to be known many years later through books and distant reports, and were sometimes never known at all by the public. Mutual responsibility among people and criteria for co-responsibility between States and governments necessarily change with these global processes. When certain levels of violence and denial of human rights are reached, the international community finds itself compelled to act. The criteria for international action, for intervention by international forces, governmental or nongovernmental, in national situations are changing ever more rapidly from day to day and may change even more in the next few years. 12/ The implications of globalization for human rights are

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11/ Anthony Guiddens, The Hague, "Affluence, poverty and the idea of a post scarcity society" in: Development and Change, vol. 27, No. 2, April 1996, pp. 365-378.

12/ We refer both to the "peacekeeping forces" of the United Nations, increasingly widely present and in demand in the world, and to the presence of regional governmental forces which is also on the increase, and especially to the intervention in specific situations and certain countries of intergovernmental or nongovernmental organizations such as UNICEF, UNHCR, the International Committee of the Red Cross, Médecins du Monde, Médecins sans

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profound and have probably not yet been adequately taken on board by the international community. Many of the public's criticisms of the international system of human rights and the United Nations system of protection, security and response to conflict have to do with this contradiction between their expectations of these bodies in an increasingly global world and the actual capacity they have for response to the new situations.

B. Concentration in economic centres

26. Globalization is producing a twofold process of concentration in the centres of greatest capitalist development. One the one hand the world's wealth is increasing and becoming concentrated in them, while on the other hand internal inequity is growing, concentrating the wealth in just a few hands. The concern of the last four or five years about the dangers of poor income distribution in the countries of the "developed" centres is growing and becoming one of the core themes of debate and public discussion. Economists and political and social thinkers of all tendencies are drawing attention to this dangerous phenomenon. Lester C. Thurow, a professor at the Massachusetts Institute of Technology (MIT), says "No country that has experienced a military defeat or a revolution has probably ever had such a generalized increase in inequality as has occurred in the United States in the last two decades. Never before have Americans seen their real wages reduced when gross per capita product is increasing". 13/ John K. Galbraith, a professor at Harvard, writes:

> "There is the inescapable fact that the modern market economy accords wealth and distributes income in highly unequal, socially adverse and also functionally damaging fashion. In the United States, now the extreme case among the major industrial countries, the Federal Reserve, an impeccable source, said that the top 1 per cent of American households owned nearly 40 per cent of the nation's wealth in 1989, the top 20 per cent more than 80 per cent. The lowest earning 20 per cent of Americans had 5.7 per cent. By 1992, the top 5 per cent were getting an estimated 18 per cent, a share that in recent years has become substantially larger, as that of those in the poorest brackets has been diminishing. This, the good society cannot accept. Nor can it accept intellectually the justification, more precisely the contrivance, that defends this inequality." 14/

12/(...continued)
Frontières, and many others that have served at certain times as a kind of new international task force of an intergovernmental and nongovernmental character in national territory. There is no doubt that this is a concomitant effect of globalization.

13/ Lester C. Thurow, The Future of Capitalism: How Today's Economic Forces Shape Tomorrow's World, William Morrow and Company, New York, 1996, p. 42.

14/ Galbraith, op. cit., p. 60.

Preoccupation with this question is common in the United Kingdom and the countries of the Organisation for Economic Co-operation and Development (OECD). "As we now know, income inequality did not continue to fall. In the United States the Gini coefficient of inequality for household incomes rose between 1968 and 1992 by three and a half percentage points... This is a significant increase, but if you want to see a big increase then it is to the United Kingdom that one has to look. Between 1977 and 1991, the United Kingdom Gini coefficient rose by 10 percentage points." 15/

27. For many of the developed countries, the processes of globalization have enabled them to embark on a new cycle of expansion in economic terms and a new cycle of worldwide spreading of their values and customs. The opening of the borders of countries living in a planned economy system and countries with protected economies has meant a substantial increase in room for manoeuvre by transnational companies and corporations with links with developing countries. This increase in levels of economic growth, product and goods available has not produced the consequence of a greater spread of wealth but, on the contrary, greater economic concentration, both in the developed countries and in the upper classes of the population in countries linked in with the new globalized activities. This twofold process of concentration is one of the characteristics of the current process of globalization.

C. Globalization and the delocation of production

28. A shared diagnosis of the sense of many of the international and local changes is gradually being reached. One recent study notes:

> "Around the world, countries have been fighting each other to see which can offer the international corporations the cheapest labour and the lowest social and environmental costs. Their jobs are being moved to places with lower wages, lower business taxes and greater freedom to pollute. Their employees are using the argument of "international competition" to knock down wages, fees, taxes and environmental protection and to replace high quality jobs with temporary, part time, insecure, low quality jobs. Their governments are justifying budget cuts in education,

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15/ A. B. Atkinson, "Bringing income distribution in from the cold", The Economic Journal, March 1997, p. 301. The author analyses all the OECD countries, showing that the trend is general, with a few exceptions especially among the Scandinavian and Mediterranean countries (Spain and Italy especially). For reasons of space we cannot comment on the whole bibliography on this question as it is very extensive. The European Centre for Work and Society in Maastricht and the European Institute of Education and Social Policy (Paris) have carried out research which is expressed in different studies on the situation of England, Sweden, Hungary, Holland and France. See: The Crisis of Distribution in European Welfare States, Jean-Pierre Jallade (ed.), Stoke-on-Trent (UK), Trentham Books, 1988. Many of the assertions made in the report are due to these and other readings which will be cited later.

health and other services as necessary elements to reduce taxes on business, as the only way of preserving jobs." 16/

29. In many countries the closure of industrial plant is being debated. This is the case in Europe for the automobile industry. "Competition has destroyed us" say the entrepreneurs. There is no market for cars, say the economists. The workers say that the factories are being transferred to the third world. The entrepreneurs say this not so. The Thompson factory making RCA Victor televisions and other types of household appliances in the mid-west of the United States has said that it will be closing its factories from 1998 and setting up an assembly plant in Ciudad Juárez, in Mexico, because they could not compete with Mexican wage levels. The levels of wages and social benefits attained by Thompson workers in middle America are possibly among the highest in the United States and in the world. This is a skilled, permanent and relatively old labour force (average of 18 years at the factory), almost entirely "white North American" and male, details of race and gender which it is not superfluous to mention since lower wages generally coincide with a change in the ethnic composition and gender of the labour force. 17/ There in an increasing number of cases and discussion in all the newspapers.

30. Something very similar is occurring with environmental costs. There are countries in Europe, the United States, Canada and other developed countries that have established stringent environmental regulations in the last thirty years, mainly as result of the action of "green" movements and a new environmental culture giving priority emphasis to "conservation", even above "production". In many of these States forestry, for example, is strictly controlled and the environmental costs to enterprises are very high, since they must replace the trees they cut down, are prohibited from felling certain species, etc. Delocation of these activities to countries without much environmental control has proceeded persistently in recent years, with drastic environmental consequences in the countries at the periphery. Mass deforestation in the Amazon jungle, eastern Asia and many other parts of the world originates in this practice. 18/

16/ Jeremy Brecher and Tim Costello, Global Village or Global Pillage: Economic Reconstruction from the Bottom Up. Boston, South End Press, 1994, p. 3.

17/ See Herald Times, 27 February 1997, special number on the Thompson closure. Thurow says that when Asians write about the welfare of European workers they cannot believe it: five weeks of holidays, one month's bonus at Christmas, etc., etc. There is no doubt that the achievements of the European trade unions through the XX century have been a very high level of wages and above all conditions of work and security that are perhaps the highest in the world. The total costs of these workers are very high indeed. See Thurow, op. cit., pp. 167 and 168.

18/ See, on the case of the Philippines and the rain forest, Brecher and Costello, op. cit., p. 25, and, in the same book, campaigns against deforestation in the Amazon and other measures by international civil society to protect native woodlands, p. 91 et seq.

31. Globalization is also arousing fear in broad sectors of the developed countries, especially among their working classes. The uncontrolled expansion of neoliberalism is going to give rise to a new wave of controls. Everywhere the new refrain is to be heard: "the corporations have to be controlled". The apparent dissolution of nation states in the economic sphere, the apparent absence of barriers to capital and its uncontrolled international mobility are beginning to produce multiple reactions that can be observed with increasing frequency throughout the world. The globalization of trade union demonstrations is without doubt a new process that was unknown in the postwar period of national social movements. Pan-European mobilization of industrial workers in defence of levels of employment and standards of living constitute a globalized response to the globalization of the economy and of work. This is the first response to a growing globalization of standards of work, wages, workers' rights and, ultimately, the standardization of economic, social and cultural rights.

D. Globalization: threats and opportunities at the periphery

32. Globalization is throwing up new threats and opportunities in the countries at the periphery of central capitalism. The threat of falling into a situation of exclusion and opportunities to establish new ways of integrating with the globalized economic system. The countries at intermediate levels of development, especially, are seeing the possibility of integrating into worldwide networks of production and world trade. 19/ Analysts say that

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19/ In an interesting study commissioned by the OECD, Jeffrey Williamson compares the periods of growth and globalization at the end of the last century and the end of this century and their consequences for Europe. He points out many coincidences between what he calls the first period of globalization, at the end of the nineteenth century, and the second period of globalization, at the end of the twentieth century. In the first period the highly populated and agrarian countries of Europe, principally Italy and the Mediterranean countries, fell into a spiral of poverty, and countries at the periphery which had agricultural potential, such as Argentina, Australia and Canada, and the United States itself, grew richer. The end of the last century was a time of tremendous globalization thanks to public transport, railways, steamers, cable and telegraph. A growing integration of trade took place, especially in commodities. The effect of cereals, especially wheat, from the "New World" in liquidating European agriculture is well known. This author says that something similar could occur in this second globalization, that the countries at the periphery that insert adequately will improve their living conditions and internal equity. "It would appear that the end of the nineteenth and the end of the twentieth centuries have more in common than just globalization and convergence. Globalization also appears to have caused the same impact on income distribution as it did at the end of the last century. Inequality would grow in the rich countries and decrease or fall in the poor countries". According to Woods, the same thing would happen at the end of the twentieth century. The author recalls that globalization culminated in the 1914-1918 war and that after that came a period of withdrawal between the wars and in the fifties. The author analyses the relationship then between globalization and migration and observes that, although that relationship does exist today (as will be seen in the relevant paragraph), it is altogether different and could

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these possibilities for integration of countries in the diverse peripheral areas of the world depend on a variety of factors, the chief of which are: (a) their previous level of development; (b) whether they have "educated" and skilled workers for modern industrial activities; (c) the political ability of the State and government leaders to maintain acceptable levels of stability, order and long-term investment prospects. 20/ It would depend on these factors whether the integration of these countries into the global economy became integration into an advantageous or "virtuous globalization" or a kind of "perverse globalization". 21/ Integration into a process of virtuous globalization would make it possible to use the necessary processes of industrial, productive and financial delocation and a multipolar system of trade with advantages for the peripheral countries. This trend is being seen in almost all continents although it is still not possible to determine with certainty, as there are some countries that have attracted multinational capital with virtuous arguments and many others, at times the majority, that have attracted it with perverse arguments: the cheapness of labour, deregulation of labour markets and absence of environmental regulation.

33. For the countries of the third world, decisions are relatively clear regarding the way in which they can try to integrate themselves into the main perspectives of world capitalism in the next twenty years. There is, lamentably, a strong and dominant tendency for international capital to try to lodge itself in places where there are low wages, low conditions of social security, and low additional operating costs for businesses, in which levels of environmental protection are decisive. It should be added that financial capital will also lodge in those countries or places which offer and deliver greater speculative flexibility. Thus, in crude but very realistic terms, there would appear to be two means of insertion into the world in the process of

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19/(...continued)
change the meaning of globalization. In any case this is a type of historical analysis that is of interest and raises a thought-provoking hypothesis about the possibilities for advantageous insertion by countries at the periphery in this globalization. See: Jeffrey G. Williamson, Globalization and Inequality Then and Now: the Late 19th and Late 20th Centuries Compared, Cambridge (MA), National Bureau of Economic Research, Working Papers Series, 1996.

20/ The incredible economic growth in the Republic of Ireland in the last ten years is an important example, as this is one of the countries at the periphery of Europe. Obviously this case cannot be generalized to the countries of the third world. Nevertheless, there are countries in Asia, Africa and Latin America that are seeking new and advantageous insertion into the globalized economy. The Economist concludes in a tone that is perhaps too triumphalist: "Two things Ireland does show beyond a doubt. First, small countries on the fringe of rich trading areas can prosper mightily. The curse of the periphery is a myth. Second, "globalisation", taken at the flood, is the fastest course to wealth." "Ireland shines", The Economist, 17 May 1997, p. 15.

21/ By "perverse globalization" we mean globalization based on over-exploitation of the labour force and the pillaging of natural resources and destruction of the environment in the peripheral countries, which are integrating thanks to the absence of protection. See note 23 below.

growing globalization: offering the best market conditions or stating demands. In the first case attractive sympathy can be expected from the corporations which will see better conditions for gains and in the second case much tougher negotiations will be needed and will probably not meet with indulgement from the corporations, especially from their often invasive and powerful bureaucracies, that dominate international decisions of this type. 22/

34. International regulation of the globalization process is very limited and boils down to the decisions and negotiations of GATT (Uruguay Round) to establish rules for international trade, principally the rules of the International Monetary Fund which sets minimum levels of financial controls, fiscal balances and limits on State interventionism in internationalized markets. The development of increasingly expeditious mechanisms of control in matters of environment and labour is of utmost importance and should help to stimulate and foster the development of the virtuous circuit of globalization rather than a vicious or perverse circuit leading to greater inequities. The Earth Summit in Rio de Janeiro and the World Summit of Social Development in Copenhagen were two events of transcendental importance in this direction, although for many observers it is not yet possible to perceive their practical results.

E. Globalization, "flexibilization", and the diminishing power of the State

35. The new period of expansion of the world economy or "end of century globalization" has had two stages: the period of "structural adjustments", in the eighties, that was able to prepare the peripheral economies to open to global trade, and secondly, the expansion of globalization proper that began at the start of the nineties. The principal consequence of the recent processes of globalization in the peripheral countries has consisted in the diminishing ability of States to control the economic development of their countries. The aim of the "structural adjustment" processes was to prepare the way for the globalization stage. The results have been the opening of economies to the world market, the internationalization of financial systems, the reduction of customs barriers, the privatization of State-owned enterprises and the diminishing, in some cases only a deterioration, of State bureaucracy.

36. In many cases globalization has also meant a deregulation or "flexibilization" of labour markets. This word much used at the moment often consists in the elimination of labour laws preventing the dismissal of workers, wage reductions, changes in pensions and social security systems, recourse to temporary labour, subcontracting, and outsourcing of tasks essential to

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22/ The role of the international bureaucracies both in wage-setting and income concentration and in decisions on the location of production is determinant. This has been analysed by John K. Galbraith in his book The Culture of Contentment, Boston, 1992. French translation La république des satisfaits : la culture du contentement aux Etats-Unis, Ed. du Seuil, Paris, 1993.

enterprises. 23/ This is leading to very marked wage differentials depending on the type of enterprise and the technical demands of jobs. It involves less interference by the State in the control of working conditions, wages and social security for workers. In many cases States in the peripheral countries have made a great effort to place their national economies, human and natural resources, at the disposal of the forces and needs of the international market. 24/

37. The moderating function fulfilled by States in setting progressive taxation on wealth has been diminished by the adjustment processes of the last decade. Almost all States have reduced taxes and especially in the peripheral countries there has been a reduction in the conditions and prerequisites for the installation of international corporations on their territories. 25/ The active functions which the State accomplished in regulating relations between capital and labour have, in many countries, also been reduced or simply modified. There are not a few cases in which workers are released to developing deregulated labour markets, arbitrary treatment at the hands of employment agencies, and in many cases a system of neo-slavery has developed in which workers have no protection whatsoever. As is well known, these new forms of

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23/ The Special Rapporteur has received numerous communications about specific cases of this kind in third world countries. One of the main subjects has been "maquila" or clothing factories. A full report on "Mandarin International" in El Salvador has been submitted by FIAN in Heidelberg, Germany: "Mandarin is a large Maquila factory producing clothing by contract orders placed by subcontractors, who then supply major retailers around the world. The word 'maquila' comes from the Spanish verb 'maquilar' which means 'to assemble'." (FIAN report, p. 4). Other NGOs have sent us material on the situation of "maquila ships", that is, extraterritorial factories, where workers live and work without breaks in the day for long periods. There is no doubt that these types of activities are bordering on "new forms of slavery" and constitute flagrant violations of workers' rights and individual human rights. These and many other cases are examples of what we call here "perverse globalization".

24/ The professors at Indiana University are stupefied to see how globalization is bringing rupture, especially in the continent of Africa. See Bradshaw and Wallace, op. cit. One of the theses explored in the book is the need of the economic centres in the unprotected economic system to move to regions with cheaper labour for production. This trend towards the cheapening of labour will provoke a kind of "perverse industrialization" in the third world, increasing the employed labour force but also increasing its conditions of exploitation and poverty. The situation of exploitation that occurred during the capitalist expansion of the nineteenth century would be reproduced in a "globalized" way, with the difference that it would happen today in a delocalized manner.

25/ See the Report of the Secretary-General on the impact of the activities and working methods of transnational corporations on the full enjoyment of all human rights, in particular economic, social and cultural rights and the right to development, bearing in mind existing guidelines, rules and standards relating to the subject-matter (E/CN.4/Sub.2/1996/12).

deregulation especially affect the most vulnerable sectors of society, and women in particular. 26/ Thus the question is not naïve, and needs once again to be asked: does the changing function of the State also change its responsibility? Does globalization perhaps involve alteration or dissolution of the responsibility of States? The answer to this question would appear very clear in the general theory of human rights and particularly in economic, social and cultural rights: the responsibility of the State is the sine qua non for the fulfilment of economic, social and cultural rights, as established in the Covenant, where it states, inter alia, that "The States Parties will take the appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent". 27/

F. Globalization and cultural identity

38. The diminishing power of the State and its capacity for control in economic and not infrequently also political matters is producing a shift of individual identity and allegiances to the ground of religion, ethnicity and culture. Economic markets, markets for goods, systems for interchange of technology and knowledge are very rapidly becoming global. Cultures, however, are taking a different and sometimes opposite path. As cultures open up to knowledge and exchanges often on a worldwide scale, reaction is occurring with the strengthening of individual identities. Professor Anthony Guiddens writes: "Globalization invades local contexts of action but does not destroy them; on the contrary, new forms of cultural autonomy, demand for local cultural identity and self-expression are causally bound up with the globalization process". 28/ The resurgence of identities is a phenomenon concomitant with that of globalization. As in all aspects, it has brought a salutary affirmation of cultural identities, together with a tendency to exacerbation of

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26/ The "rurbanization" of the countryside in many countries of Latin America consists in the appearance of settlements or slums at cross roads in agricultural export areas. The precariousness of those settlements, job insecurity, likelihood of hard labour, concentration of poverty and destitution, are some of the characteristics of these new forms of slavery. See Sara Lara Flores, "Flexibility in the rural labour market" in: Revista Mexicana de Sociología, Year LIV, No. 1, January-March 1992, pp. 29-49. In the same number, see: H. Carton de Graumont, "Reflections on the labour market in rural Latin America". See Jimena Valdés S., Mujer, trabajo y medio ambiente. Los nudos de la modernización agraria [Women, Work and Environment. The Hubs of Agrarian Modernization], Editorial Centro de Estudios y Desarrollo de la Mujer, Santiago, 1992. See also the ILO report on "Conditions of employment and work on plantations, including the provision of basic needs, with special reference to seasonal workers, women and young workers", Geneva, International Labour Office, 1989.

27/ Article 11 of the Covenant on Economic, Social and Cultural Rights. This subject was dealt with in the first report by the Special Rapporteur (E/CN.4/Sub.2/1995/14).

28/ Guiddens, op. cit., p. 367.

ethnic/nationalist forces and discourse, with the dramatic consequences that we have seen in diverse parts of the world in recent years.

39. If there is a massive process of "perverse globalization" such as we have described in this report, it would most probably result in an increase in movements reaffirming "elemental identities". The sequelae of conflicts and threats to peace are easy to understand. Social disintegration, in its twofold sense of "atomie" and "anomie", in the language used by Johan Galtung, is one of the main effects of globalization as a "wild" uncontrolled process of mobility in economic factors, communications and exchanges and the subsequent destruction and restructuring of life systems. Atomie would be the process of social disintegration or "atomization" and "anomie" would be the process of "cultural disintegration", the disintegration of broader cultural concepts that make democratic social life possible. The upsurge of racial, ethnic/religious or simply local violence is related to the appearance of these disintegrating processes in both the social and cultural spheres.

40. Defending human rights involves defending basic forms of social integration. The policies and measures that lead to social disintegration run counter to the Universal Declaration of Human Rights, and in particular to the International Covenant on Civil and Political Rights, which maintains, especially in its third, fourth and fifth preambular paragraphs, that it is inherent in the rights of free human beings that they "enjoy civil and political freedom and freedom from fear and want" and that this "can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights". 29/ The system for the prevention of human rights violations at the international and regional level must bear in mind that the application of certain policies, especially policies resulting in high income concentration, high levels of redundancy and poverty, will bring as consequences the social disintegration (atomie) and cultural disintegration (anomie) of society, with serious consequences for the rights of individuals.

41. Local communities play a very important role in the process of resistance and defence against atomization and anomization provoked by uncontrolled globalization. Human rights, and especially economic, social and cultural rights, are a central criterion for determining when violations of individual rights are produced, especially in the sociocultural sphere. The rights of communities and local societies are defended, in this new perspective, by the human rights system. 30/

29/ International Covenant on Civil and Political Rights, third preambular paragraph.

30/ The rights of persons belonging to linguistic, ethnic or national minorities and the rights of indigenous peoples are very important in this sphere. It is not by chance that in the period of globalization we are analysing here, these are the rights in greatest focus. See Gudmundur Alfredsson and Goran Melander, A Compilation of Minority Rights Standards. A Selection of Texts from International and Regional Human Rights Instruments and Other Documents. Lund, Raoul Wallenberg Institute, 1997. See also the report of

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G. "Top down" and "bottom up" globalization 31/

42. So far we have talked about "top down globalization". This is the satellite globalization described by Guiddens, the expansion of trade in goods and especially the expansion of "symbolic goods", consumer images, experiences of happiness, ideas about beauty, trademarks of products and objects representing symbols of integration into the modern world. The globalization of communications systems, trading systems and political systems are what we call "top down globalization".

43. Together with the globalization of communications, commerce and power, the globalization of ideas about "good living" or "good life" or the "humane agenda" has also begun. 32/ Human rights are at the centre of this perspective which we call "bottom up globalization". The international human rights system is the broadest set of standards and contractual commitments in existence, the most universal consensus attained by humanity for the defence of human beings. In "bottom up globalization" an active part is played by the organizations of civil society whose explicit objective is to defend the universality and indivisibility of human rights. This is the point of departure for the new and increasingly globalized human agenda.

44. The "globalization of standards" is the most important consequence of "bottom up" globalization. Local communities as well as being subject to the impacts of international trade are also feeling the impacts of new conceptions of justice and equity that are being intercommunicated throughout the world. This means that old ways of life that were bearable in isolation and in

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the seminar organized by the International Commission of Jurists in Bolivia in 1996 on the economic, social and cultural rights of indigenous peoples. Geneva, 1996.

31/ Formulation by Xavier Gorostiaga, Rector of the Universidad Centro Americana (UCA) in Nicaragua, at the International Meeting on the New Economic Order and Development: an Ethical Challenge for the XXI Century, organized by the International Development Ethics Association and the Centre for Studies of Contemporary Reality of the University of Christian Humanism, Santiago, 25-30 October 1995.

32/ For the concept of "good life", see: David Crocker, "Global civil ethics and a global society?" Report to the International Meeting on the New Economic Order and Development: an Ethical Challenge for the XXI Century. For the concept of the "new human agenda" see, inter alia, the recent book by John Kenneth Galbraith, The Good Society: The Humane Agenda, cited earlier. For the concept of human development, reference may be made to the annual reports of the United Nations Development Programme, and from a theoretical angle, to Manfred Max Neef, Development on a Human Scale, Santiago, 1987, and Denis Goulet, "Human Development. True Wealth and Real Economic Efficiency", in: Cristianismo y Sociedad, Quito, Year XXXIII, Nos. 125 and 126, 1995, pp. 37-53.

ignorance of alternatives are beginning to be called into question locally. 33/ Workers in the most diverse places in the world are understanding and comparing the working conditions at other latitudes. The mobility of labour produced by communications makes displacement or expectations of displacement possible, at least in theory. Globalization thus leads to globalization of needs, levels of expectation, conditions of security, and consumption needs. Unacceptable levels that are increasingly shared are being established as a result of the globalization of expectations for standards of living and work.

II. INCOME DISTRIBUTION AT THE INTERNATIONAL AND NATIONAL LEVELS

45. The objective of the second report was to furnish a series of specialized data on income distribution at the international and national levels to a wider public, and in this report we shall therefore only summarize the conclusions of this empirical exercise. Several indicators were devised, the main ones being one to establish the distribution of global wealth between countries at the international level and the other to analyse the domestic behaviour of income distribution within each country. 34/

A. Income distribution at the international level

46. Studies and analysis of the gap separating the rich from the poor countries have become commonplace and simply reading the data is very often of no interest, becoming a statistical repetition of a fact ostensibly already well known. In the preliminary report submitted to the Sub-commission it was attempted to construct a global indicator separating the countries of the world into five groups or quintiles. This indicator permitted understanding of the growth of wealth and its distribution and is presented in Table 1 (see Annex). 35/

47. The growth of the world economy over the last 35 years has been enormous, measured only by GDP, which as we know falls far short of measuring wealth in its entirety. Informal business and speculative activities are left out, especially clandestine and illegal activities, which, regrettably, as we know, today make up a substantial share of globalized economic activity. Nevertheless in 35 years it has risen from 1.1 to 24.9 thousand million dollars. If Table 1 is examined, it will be seen that the quintiles representing the poorest countries have not developed proportionally but on the contrary have increased

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33/ See the preliminary report (E/CN.4/Sub.2/1995/14) in which we dealt in detail with this question.

34/ The data provided by the World Bank, IMF and other international organizations are not always up to date. In the case of income distribution most of the data are for the year 1993 and 1994. In particular the data on the OECD countries have not been updated in the report of the World Bank for 1996.

35/ The World Bank reports published in 1996 are similar to those for 1995, generally giving figures for 1994, so that there is no change. In these grosser figures time periods of more than one year are required.

their wealth in a much smaller proportion. This means that the poor countries are comparatively poorer today than 35 years ago. The one fifth poorest countries achieved absolute growth in the sixties and have stagnated (in absolute terms) in the last 15 years. This explains why their share has declined in a more than alarming manner, from 0.21 to 0.07%.

48. Although they saw the repercussions of the crisis of the late sixties and early eighties, the rich countries have recovered their share of 92% of international GDP. The countries at an intermediate level of development, the second quintile, recovered in the period 1990-1994, with figures corroborating the point made earlier about the "opportunities" for countries of intermediate growth at the periphery to integrate into the "wave of globalization".

B. Diminishing international cooperation

49. The growing breach between the rich and poor countries has not been met with the response of an equivalent flow of international solidarity. Trends since the end of the cold war have been towards diminishing international cooperation or relating it to processes of opening up new markets for the products of donor countries or programmes "moored" to the purchase of inputs in the country of origin. In a recent study of this matter it was reported: "Although the richest countries on earth have set a goal of giving 0.7 per cent (less than 1 per cent) of their GNP for Third World development, only four countries have actually done so. Again, as shown in the Figure, they are Denmark, Norway, Sweden and the Netherlands. The United States, by contrast, is at the bottom of the list, giving less than 0.2 per cent of its GNP to other countries in the form of foreign aid". 36/ The targets set at the World

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36/ Bradshaw and Wallace, op. cit., p. 141. The following table is taken from a graphic in this book:

Foreign aid as a percentage of GNP, 1993

Denmark	0.97
Norway	0.89
Sweden	0.82
Netherlands	0.80
France	0.61
Canada	0.41
Belgium	0.38
Germany	0.37
Finland	0.37
Luxembourg	0.35
Portugal	0.32
Switzerland	0.31
Australia	0.31
Austria	0.30
Japan	0.29
United Kingdom	0.28
Italy	0.27
Spain	0.23

(continued...)

Summit for Social Development in Copenhagen have not been met and there has been very little political will to fulfill them in practice. 37/ In many countries the cooperation budget has been persistently "cut" over recent years and numerous organizations have disappeared, including foundations that were devoted to development and solidarity with countries of the third world. 38/

50. Studies on international cooperation point to the decrease in funds for the development of self-sustaining projects in the underdeveloped countries. Since the end of the cold war international cooperation policies have been changing continually, often leaving projects half finished, changing priorities in regard to recipient countries, types of projects, etc. Projects to create their own human resources and local institutional capacities in the poor countries have been greatly weakened and in many cases enormous distrust has been manifest among local managers. 39/ There is a perceived emphasis on methodological aspects of project formulation, follow-up and evaluation which seek to replace the absence of clear guidelines and aims in cooperation. Pressure for "concrete" results is observed and behavioural models are sought among "profit-making" enterprises without there necessarily being any understanding of the intrinsic characteristics of the processes of human and community development, which by definition cover a more prolonged timespan.

51. International cooperation very often concentrates its activities on a country that is in difficulties or conflict and once a minimal solution to these has been found, or they are no longer "in fashion", the country is dropped as it no longer "qualifies" in terms of criteria for emergencies, generally

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36/(...continued)

New Zealand	0.22
Ireland	0.18
United States	0.15.

37/ See Social Watch Group, Follow-up report on the Social Summit. Third World Institute, Montevideo, March 1997. See also "Distribution of net aid by Development Assistance Committee countries, World Development Indicators, World Bank, 1997, pp. 310 et seq.

38/ See Human Development Report 1996, United Nations Development Programme, New York, Oxford University Press, 1996. An illustrative case is the reduction in activities and budget of the Inter-American Foundation (IAF), dependent on the United States Congress, since the end of the cold war. As an example of this trend the International Association of Voluntary Agencies, with its headquarters in Geneva and more than a hundred member organizations with long experience, has decided to close its offices in Geneva for lack of resources to maintain them.

39/ Mariano Valderrama. "International cooperation since the cold war". Study commissioned by the Latin American Association of Development Organizations (ALOP), Lima, 1996.

arbitrarily adopted. 40/ In so far as international cooperation has no rules or criteria relating or linked with the right to development or the principles of economic, social and cultural rights, decisions are made by specialists and technical experts or by a changing public. 41/ A rethinking of international cooperation is needed with its principal objective being to create local and autonomous bases for sustainable and self-sustained development. 42/

52. As international cooperation for development and local capacity building has weakened, there has been a perceived increase in humanitarian activity in response to crisis situations. It is worrying to note the reappearance of "paternalistic" views of development aid, consisting in giving priority only or principally to reactive responses to dramatic situations, mass famines or the sequelae of wars and displacements. Emergency solidarity is absolutely indispensable at certain times of crisis and uniquely dramatic situations and has to be valued, but there must also be insistence on the permanent needs for cooperation and collaboration by the developed countries with the third world. As the international development agencies with most experience in the field are suffering financial crisis, agencies devoted to charitable or philanthropic work are beginning to appear in many parts of the world as the model for international cooperation.

40/ The pursuit of "visible" results is a fantasy plaguing the present phase of international cooperation, which suffers from the trauma of being accused of being "inefficient" by the economic and political actors. In the face of the historical and long term problems of poverty and underdevelopment, "visible" and short term results are often contradictory and detrimental to a vision that conceives of development as a self-sustaining process, that can only be long term.

41/ One among many cases is that of Haïti , which has had a relevant presence in recent years and since the establishment of democracy has received a trickle of cooperation. The President of the United States offered the sum of 10 million dollars at the last interview with the President of Haïti at the meeting with the presidents of the Caribbean countries. Interview with the Prime Minister, Rodney Smart, in the daily newspaper La Epoca, Santiago, 12 May 1997.

42/ Several communications were sent to the Special Rapporteur analysing this subject already covered in the second report. It would appear that the subject gives rise to deep concern. The Department of Humanitarian Affairs of the United Nations sent us comments indicating that the guidelines with which it is working coincide with the report: "From the perspective of natural disaster reduction, humanitarian assistance should not be limited to short-term and ephemeral actions, which maintain a perpetual dependence of the victims on the outside, even though relief activities are essential to help the communities concerned to emerge from crises and ensure their recovery". It goes on to stress the importance of preventive actions, and points to the relationship that exists between conditions of vulnerability and respect for human rights as a factor of central importance. Letter from Mr. Martin Griffiths, Director of the Geneva Office of the Department of Humanitarian Affairs, 23 April 1997.

53. International cooperation played a political and strategic role during the cold war. The powers made over resources to the third world and to development agencies which helped to maintain ties of political loyalty in a world of polar division. Very often international cooperation was used as a weapon in the play of political balance. Since the cold war ended, international cooperation has entered a profound crisis. The Copenhagen Conference or World Summit for Social Development did not succeed in signing up a commitment on this issue, leaving it to States to freely determine whether they wished to increase or decrease the volume of cooperation, the methodology to be applied, financial decisions on debt reduction and their response to other initiatives suggested to the participating States. The main practical conclusion of this final report, as will be seen in the last part, is the need for a Social Forum in which these aspects are discussed. Although there are many instances in which international cooperation is debated, there is none that can be perceived as bringing together all the main actors, that is, States, the specialized agencies of the United Nations and agencies specialized in development and cooperation. An open forum for debate would undoubtedly enable more constructive proposals to be built up in this fundamental domain.

54. Analysis of income distribution at the international level cannot be separated from study of the mechanisms of income "redistribution" at the international level, of which international cooperation is the most important inasmuch as it expresses determination by the developed States to collaborate in building a higher level of equity at the international level. The agreements on "globalization" that are now constantly being signed ought to include this dimension of economic relations. The free trade treaties do not as a rule include a special protocol on international cooperation. Nor is there any determination in multilateral agreements to establish special mechanisms of protection, support and back-up to the poorest countries, a sort of "affirmative action" that would enable them to initiate a self-sustaining process of development. 43/ The main conclusion reached in this study on income distribution at the international level is to signal the need to include cooperation agreements tied to commercial agreements on free trade and economic and commercial cooperation, whether at the international, regional or bilateral level.

43/ Very often a general condition of "freedom of trade" is imposed, which benefits big firms against small countries. Discussion of bananas from the small English and French speaking countries of the Caribbean is an example. Their quotas in the European Economic Community, which for the Community do not represent a very high percentage of consumption, enable them to sustain an economy based on small banana growers. Pressure for the abolition of these quotas would lead to the big firms such as Dole and Standard Fruit cornering the market and leaving the small Caribbean producers outside. A United States general engaged in the fight against drugs pointed out the looming danger that these growers, seeing the banana market displaced, might be "tempted" to produce drugs, for which their fields are very well suited. He put it quite graphically that "they are transferring the problem to me". New York Times, 5, 6 and 7 May 1997.

C. Income distribution at the national level

55. The national economies of countries at the centre and at the periphery, or in the third world, have recovered in the first five years of the nineties, in almost all cases showing positive figures. The expansion of markets to the former planned and/or protected economy countries has meant an enormous stimulus to international trade. But this economic growth has not been accompanied by significant changes in the internal composition of income distribution despite the fact that the general level of employment has improved in countries such as the United States.

56. Table 2 (see Annex) is a correction of the indicator constructed in the 1996 report (E/CN.4/Sub.2/1996/14, Table 9), "Ranking of countries by income distribution pattern". For this table we have tried to obtain the most recent data possible in order to comprehend more fully the impacts of the processes of globalization on income distribution. 44/ As it is easy to perceive, the trends shown in the previous report are reaffirmed: (a) poor countries with mainly agrarian economies which have a low level of per capita income and not very concentrated income distribution; (b) developed countries with a high level of per capita income and deterioration of their formerly good levels of income distribution; (c) a group of developing or underdeveloped countries with low per capita income and bad income distribution; (d) countries on the periphery of Europe (Spain, Portugal, Ireland and others), with substantial rates of growth and that have managed to maintain or improve their conditions of income distribution; (e) countries in south-east Asia with a high level of per capita growth that are improving their internal income distribution.

57. The conclusion from the data presented here is that there is not one single trend in internal income distribution. Although it is signalled in this report that the predominant trend accompanying the globalization of economies is towards the concentration of income, it can be seen that there are numerous special cases in a position to depart from this trend, which shows and clearly expresses the role that is and can be played by the State in these matters. The economic policy measures each State adopts determine the type of insertion of their national economy in relation to the international economy. The table and the data show very clearly that the role of the State's economic policy and action continues to be decisive.

1. Income distribution in the former centralized economy countries

58. The situation of the former centralized economy countries is a special case of income concentration and regressive distribution of wealth in a short period of time. Although the data only go back to 1993, the trends to be seen

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44/ During the discussion of item 8 of the agenda of the forty-eighth session, the Subcommittee member Mr. Kalifa, an expert from Egypt, made several very interesting comments on the report pointing out that the most recent data might possibly show that the impacts of globalization were producing greater inequality at the national level and suggested that we should give the most recent possible data in our final report. Regrettably the data published by the World Bank in 1996 are for 1993 or earlier.

are extremely pronounced. 45/ "In Russia, where inequality rose sharply, the top quintile in 1993 received fully 20 percentage points more of total income than the top quintile in 1988, mainly because of an explosive increase in the relative share of the very richest but also because of increasing wage dispersion. Income dispersion between sectors in Russia has also risen. The energy, banking and related sectors all made major gains, with the biggest losers being agricultural workers, followed by workers in culture, education and health." 46/

2. Income distribution in the countries of Latin America

59. The 1996 Economic Commission for Latin America and the Caribbean (ECLAC) report on Latin America comments gloomily as follows: "Hopes that recovery to previous levels of production or the start of a new process of growth would enable the deterioration in income distribution that took place in the eighties to be reversed have not so far been confirmed in practice. In effect, it emerges from the trends in the first half of the nineties that the dynamism of economic growth achieved in various countries of the region was not translated into a reduction in income concentration". 47/

60. Almost all the countries of Latin America show substantial recovery in macroeconomic figures in the last six years. The so-called "lost decade" of the eighties has been left behind in almost all economies. Structural changes are proceeding rapidly, with the privatization of enterprises, opening to international markets, and growth of exports. At the same time there is visible stagnation, and in some cases an increase in the internal inequalities in societies. With the honourable exceptions of Costa Rica and Uruguay, all countries have seen a rise in their indicators of inequality.

45/ The United Nations University carried out a study entitled "Project on poverty, income distribution and well-being during the transition". Communication by the Rector, Haitor de Souza, 24 April 1997.

46/ World Bank, World Development Report 1996, p. 64. Hungary is the country that has changed least in its income distribution pattern (up 2 points on the Gini coefficient between 1987-88 and 1993), followed by Slovenia (up 4), Poland (up 5), Czech Republic (8), Bulgaria (11), Estonia (16) and Russia (between 14 and 24 according to different estimates). The 1996 World Bank Report gives 1 Gini for 1993 in China of 38 higher than all the countries mentioned earlier except Estonia and Russia. Viet Nam is reported to have had 34 in 1993. There are no indicators for comparison in these last two cases. Ibid., Table 4.1 Inequality and poverty in selected transition economies. Figure 4.1 Gini coefficient in eight transition economies.

47/ See ECLAC, Social Panorama of Latin America, 1996. The box says: "High levels of inequality and rigidity in income distribution are charcteristics that persist in the region in the nineties". The report, published in February 1997, is devoted in good measure to the problem of income distribution and poverty in Latin America. The report contains very detailed tables on this situation in the Latin American countries, which we shall not reproduce here for that reason.

61. Growing inequality in a context of accelerated economic growth is becoming the principal problem of "governability" in the countries of Latin America. Democracy is being eroded for lack of correspondence between political principles at the economic and social levels. The enjoyment of civil and political rights achieved with the advent of democracies in all the Latin American countries is not matched by corresponding enjoyment of economic, social and cultural rights by the population as a whole. 48/ Latin America has one of the highest levels of inequality in income distribution in the world, as can be seen from Table 2.

D. The inequitable distribution of knowledge

62. The distribution of knowledge gives us an indication of how the economic and social differences of today will be reproduced in future generations. Still more so if we consider the unequal distribution of scientific research, experimentation with technology and theoretical thinking. If income distribution is generally poor at both the international and national level, then it has to be said that the distribution of knowledge is still worse. If the ratio between the bottom and top quintile at the international level is 0.007 to 92.40 for income distribution, rough calculations based on UNESCO data show that spending per student on education is 0.001 for the bottom quintile in relation to a 95.5 concentration in the rich countries.

63. In so far as wealth in the modern world is closely related to knowledge, the distribution of educational resources is fundamental to an understanding of income distribution in future generations. In 1992 the percentage of students of an age to study at universities (or colleges) in the poor countries was 2.78% in the poor countries, 11.29% in the middle income countries and 39.45% in the rich countries. The same gap may be observed in secondary education. In this case the poor and middle income countries have more boys than girls in education, while in the rich countries there are now more girls than boys. 49/

48/ In 1996 the Summit Meeting of Presidents of the Iberoamerican Countries was held in Viña del Mar, Chile. The subject of the meeting was "challenges of governability" in the emerging democracies. In many interventions poverty and poor income distribution were seen as the potential element for greater destabilizing capacity. Regrettably the Summit did not reach any consensus on the subject of the domestic economies of countries.

49/ In the poor countries 20.63% of boys and 17.39% of girls are in secondary or middle school education. In the middle income countries the figures are 37.48% of boys and 30.64% of girls. In the rich countries the corresponding figures are 89.55% of boys and 95.86% of girls. In these countries a level approaching 100% are entering basic or primary and secondary or middle school education, both generally corresponding to 10 or 12 years of study. The Clinton administration's target is 100% of young people at College level by the end of the decade, that is, in four-year basic university studies. Data from Global Inequalities, based on data from UNESCO and the World Bank, op. cit., pp. 22 and 23.

64. Article 13 of the International Covenant on Economic, Social and Cultural Rights clearly sets out the duties of States in regard to education and "the right of everyone to education". Cultural rights in a globalized world are much more complex and the challenges are greater. Failure to satisfy the right to education amounts in practice to the denial of all other rights for the future of that individual or human group. Lack of education at a relatively high level will in the near future become a basic impediment to the participation of that individual or group of people in the economic, social and cultural life of the contemporary world. Cuts in education budgets, especially on account of budget increases in other areas, such as the military, are in this sense a violation of cultural rights. 50/

III. INCOME DISTRIBUTION, EXCLUSION, POVERTY AND DISCRIMINATION

65. Income distribution at the international and national levels is closely bound up with the processes of exclusion, poverty and discrimination. Exclusion is a concept that according to many authors would appear to accompany the new stage of globalization. 51/ A territorial exclusion occurs in the first place. Although there are parts of the world that are integrating into the new globalized situation, there are also many other regions and parts of the world that are excluded, that is, whose level of integration is decreasing in this new phase of world capitalist development. Secondly, the same process is occurring within each country, where regions that were formerly adequately integrated with the rest of society are being subjected by these new processes to a downward spiral towards exclusion. Thirdly, exclusion is occurring at the level of social groups discriminated against, especially for reasons of gender, ethnic origin or race. Within societies there are social groups that find themselves excluded and in which income differentiation implies a gradual disintegration of the ties by which they were bound to the rest of society. There are minority groups and indigenous peoples for whom the processes of globalization have led to severely accentuated phenomena of exclusion. 52/

50/ As was shown in the second report, in the poorer countries, at the same time as military budgets are increasing the budget for education is very often declining. Responsibility for violation of cultural rights, especially those of children, is shared by the countries selling arms, very often on the basis of credits, and the countries buying them.

51/ Martine Xiberras, Les théories de l'exclusion. Pour une construction de l'imaginaire de la déviance, Preface by Julien Freund, Paris, Méridiens Klinck-Sieck, 1993.

52/ See Voices of the Earth, Victor Kaisepo (ed.), Amsterdam, 1996, in which clear expression is given to the growing situation of exclusion of many indigeous peoples in the world. Very often exclusion permits discussion of concepts of autonomy. See Indigenous peoples: experiences with self-government. Proceedings of the Seminar on Arrangements for Self-Determination by Indigenous Peoples within National States, Amsterdam, 10 and 11 February 1994. Law Faculty, University of Amsterdam, W. J. Assies and A. J. Hoekema (eds.), Internation Work Group for Indigenous Affairs document No. 76. Published by IWGIA and University of Amsterdam, Copenhagen, 1994.

66. In this final report on income distribution we wish to draw attention to the consequences of a situation of permanent inequity over time: poor income distribution at the national and international levels gives rise to permanent situations of social exclusion. Exclusion is deeper and more definitive than poverty. Exclusion is the absence of participation, segregation, neglect and being forgotten. The existence of sectors that are excluded at the international and national levels leads to the development of some very particular feelings on the part of the sectors that are not excluded. The philosopher Julien Freund remarks that: "It would appear that exclusion is now part of normality in societies, and does not arouse any special moral or political conscience but instead evokes pity in the guise of the virtue of charity". 53/ The consequence of exclusion, as has been seen in the case of international cooperation, is this sentiment of pity. "It may be that the spread of many forms of exclusion, and pseudoexclusion, in society is a sign of the times", Freund concludes.

A. Is the Third World still there?

67. International income distribution figures show that there are some parts of the world that are being left in a position of exclusion, marginality and poverty. There are some economic and social developments that are becoming clichés, only too well known and in the end "so boring that nobody talks about them". In an article published in several journals and books, John Toye asks: Is the Third World still there? He begins with an anecdote which runs roughly as follows. One summer, when they had nothing more interesting to do, the sub-editors at the London Times decided to see who could think of the most boring headline for the famous newspaper. The most boring headline agreed by consensus by all the bored editors was "Slight earthquake in Chile. Little damage." The article went on to point out that in order to be newsworthy and cease to be boring the event would need to exceed a certain threshold at which it would become a disaster that would move the phlegmatic editors of the London daily. 54/ It is obvious that Chileans who every so often suffer earthquakes of varying degrees of intensity do not find the question at all

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53/ Xiberras, op. cit., Preface, p. 12. Analysing the question of ties of solidarity, Martine Xiberras signals the following principles: "The nature of the social relationship is founded on cooperation and service as opposed to attitudes of rejection and mistrust. Solidarity is constructed and described according to the presence of the following criteria: the sacrifice for which individuals are prepared to suffer and hope for the same feeling in return. The sense of loyalty, creating a feeling of mutual trust animating members of the group ... and the same definition of what is sacred, through which all members of the group recognize the same "sacred". (p. 136). (Translation J. B.) Human rights are the only "sacred" common to all human beings and the basis for international solidarity, as we said in the first report, quoting the German philosopher Jurgen Habermas.

54/ John Toye, "Is the Third World still there?" in: Development Studies: An Introduction through Selected Readings, Ron Ayres (ed.), Greenwich University Press, 1995, pp. 35-49. The article does not refer to Chile but is only an anecdote to illustrate the view held in the first world of the third world.

boring. Much the same is true for the issue of third world poverty. "There are many poor in the Third World" would be an equally boring summary and there would probably be no editor who would wish to see his papers left unsold in the kiosks.

68. The question of the third world and the inequalities that we have seen are increasing in the previous chapter is in danger of becoming an issue that only interests public opinion and governments when it exceeds a certain "dramatic threshold" which causes it to be reported as "news" in the press and television and to become the focus of solidarity campaigns which soon evaporate. A framework is thus taking shape of "permanent and persistent violations" of the economic, social and cultural rights of a substantial and increasing majority of the world's population, threatening the solidarity of international humanitarian principles and human rights. The permanent exclusion of parts of the third world leads to exclusion of social sectors and groups.

B. Income distribution and mass movements of population

69. The developed countries and their populations tend to see the problem of the gap between the rich countries and poor countries only in terms of the migrants arriving at their borders in thousands and millions each day. "In the 1980s, 7.9 million people legally moved into the United States and 7.3 million people legally moved into the rest of the first world. In 1992 there were estimated to be 3.4 million illegal aliens living in the United States. In the 1990s immigration accelerated and by 1995, 9 percent of all Americans had been born abroad, with a very uneven spread among the states, including 25% of all Californians not native born. Within the third world, millions of people are moving from somewhat poorer to somewhat richer countries - more than 2 million per year in Asia alone. In addition, there are 23 million refugees in the world. Overall, about 100 million live outside of the country where they were born." 55/

70. The unfavourable income distribution situation at the international level is giving rise to mass movements of populations and unleashing in the receiving countries complex interethnic processes, segregation of minorities and problems of migrant workers without papers. The most complex processes now being experienced by developed societies, including new forms of racism, are a direct consequence of deregulated economic activities at the international level and of an inequitable and "wild" process of globalization.

55/ Thurow, op. cit., pp. 92 and 93. The author says that if one considers a peasant in a Mexican village, California is not very far away and he has nothing to lose in trying to get to a place where per capita income is thirty times higher. The worst that could happen is that he might be sent back at the border. What is happening with Mexico, Central America, the Caribbean and the United States, is also occurring between North Africa and Europe and to a lesser extent in Asia. Thurow signals the danger that third world "pockets" may form within the developed countries and could be a way of avoiding the displacement and delocaliztion that is being brought by globalization.

C. Income distribution, minorities and indigenous peoples

71. Income distribution generally affects national and ethnic minorities and indigenous peoples in an adverse manner. In many countries the poorest sector of the population coincides with these social and ethnic groups that experience discrimination. Professors at Indiana University say: "Ethnic minorities historically have faced economic discrimination, political repression, and violence. The table presents data on the number of minorities at risk around the world. To be included a minority group must (1) be relatively large (usually exceeding 100,000) and (2) experience economic and/or political discrimination. Look carefully at the last column of the table. The percentage of the world population considered a minority at risk is about 17 per cent. It is not a coincidence that countries with a large population at risk also have substantial conflict, some violent and some not violent". 56/

Minority Populations at Risk, 1990

Region	Total (millions)	Per cent of total
Western and Japan	84,023	10.8
Eastern Europe and former Soviet Union	153,658	35.0
Asia	273,064	10.2
North Africa and Middle East	118,205	28.8
Sub-Saharan Africa	237,023	42.3
Latin America	49,371	11.0
Total	915,344	17.3

72. In Latin America, the indigenous peoples are the most discriminated against and are thus the poorest sector of the population. The table gives a conservative figure of 11% of the population since it uses official and restrictive definitions of "indigenous peoples", distinguishing them from peasant populations. The question of income distribution is closely bound up with the ethnic discrimination suffered by the indigenous peoples.

73. In the western democracies, the United States and Japan, the figure of 10.8% refers generally to the ethnic minorities produced by migration and migrant workers, who are often, or generally, among the poorest sectors of the population and usually experience strong discrimination in work, income, education and culture. 57/ It needs to be remembered that millions of

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56/ Bradshaw and Wallace, op. cit., p. 36.

57/ For example, liberalization of the system of admission to higher education in the universities of the United States, and the composition of ethnic quotas, have had negative repercussions on enrolment by students of

(continued...)

illegal migrants in the developed countries have jobs, although they are generally paid less and do not have social security. John K. Galbraith maintains that these migrants are an economic necessity for the developed countries. 58/

D. Income distribution and gender discrimination

74. Income distribution is commonly measured by household and thus conceals the situation of discrimination generally encountered by women. Recent studies have shown that women "heads of household" are among those in situations of greatest disadvantage and poverty. In the third world the households in which the woman is the only source of support for the children amount to nearly 20%. There are countries in Latin America in which this situation is growing very rapidly, possibly related to the internationalization of economies we are analysing in this report. 59/

75. The "feminization" of poverty is a new phenomenon observed in most of the countries of the third world that is beginning to be detected in developed countries as well. The figures show more women than men in the poorest strata of the population. At the same time, greater demands are made on women in a "flexible" or deregulated labour market and they are paid less. Seasonal work in the exporting agricultural economies in the third world is generally done by women. Jobs in the garment industry, growing day by day, are mainly done by women. As we have already said, the "delocation" of industry very often means the "feminization" of labour, as a way of bringing down costs. There are situations of open violation of the rights of women, the rights of workers, economic, social and cultural rights, and thus of human rights. 60/

57/(...continued)
Hispanic or African American origin. "At the University of California Berkeley law school, 14 blacks have been accepted in a class of 792, down from 75 last year. The decline among Hispanic students at each law school is similar". Bans of racial preferences cut minority admissions, International Herald Tribune, Tuesday, 20 May 1997, p. 1. Affirmative discrimination and admission quotas are the only measures that can ensure equality of access to education and culture during the period of balancing between the minority groups experiencing discrimination.

58/ Galbraith, The Culture of Contentment , op. cit., pp. 138 et seq.

59/ See ECLAC, op. cit., chap. V, which gives data for Argentina, Chile, Honduras, Mexico, Paraguay, Uruguay and Venezuela, comparing the years 1990 and 1994. In Mexico, for example, there were 1,050,600 children in households with only one spouse, who as is well known is usually the woman responsible for looking after the children. In 1994 this figure had risen to 1,132,700 of whom 806,000 did not have their basic needs met.

60/ See Sara Lara Flores, Jimena Valdés et al., Temporeras y jornaleras en América Latina [Women Temporary Workers and Day Labourers in Latin America], Mexico, Nueva Sociedad, 1995.

E. The role and responsibility of States in regard to exclusion

76. In his book on the "human agenda", Galbraith posits the close relationship between the system of income distribution and the political system. "The distribution of income in the modern economy derives ultimately from the distribution of power. This in turn is both a cause and a consequence of the way income is shared. Power serves the adquisition of income; income accords power over the pecuniary reward of others. The good society recognizes and seeks to respond to this traditional closed circle". He adds the need for the State and society to take the situation of the poorest sectors in hand: "Its response is the empowerment and public protection of the powerless..." 61/

77. The State is responsible for keeping society united and dominating trends towards dispersal, and in particular for preventing the existence of situations of exclusion. Concentration of income is one of the most disruptive and divisive aspects in a society. The role of the State is fundamental in the development of policies to curb the tendency towards inequitable income distribution as far as possible. The argument most often heard in international fora is that there are no possible measures or alternative systems in the face of the process of globalization now under way. The responsibility of States is thus delimited, signalling that they "can't do anything else". It is for this reason that a critique from the standpoint of economic, social and cultural rights is pertinent in the present situation: the responsibility of States is inescapable where there are violations of fundamental rights, and exclusion is the most fundamental violation of all.

F. The silence of the innocent: the rights of the poor and excluded and economic, social and cultural rights in a globalized world

78. "Reducing poverty is the fundamental objective of economic development". This is the bald opening statement of the World Bank's World Development Report for 1990. 62/ Today it has become almost a platitude in spite of the impotence and drama inherent in it. The objective of this final report has been to show and understand that economic growth today in most countries of the world is proceeding with very poor distribution of wealth, that in their private lives people are not able to understand, and very often do not believe the figures that are put to them. There is a gap between the behaviour of the economy as a

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61/ Galbraith, The Good Society, op. cit., p. 65.

62/ World Bank, "What do we know about the poor?" World Development Report 1990, Oxford University Press, 1990, p. 24. Regrettably this study shows that the World Bank still knows very little about the poor and does not offer any solutions to do away with poverty. In a division of labour with the IMF, it has "squeezed" the poor countries so much that social and even political consequences are now being seen. See "Their Africa problem and ours", New York Times Magazine, 2 March 1997, in which some bare-boned reflections are made on the situation of Africa and the responsibilities of the developed countries.

whole and people's individual economies, a question which national and international policy has never addressed. 63/

79. This growing contradiction between growth and distribution is having disastrous consequences in many countries and regions of the world. In nations apparently united, where the process of globalized economic growth without distribution is "demolishing" long-standing loyalties, the "integration mechanisms" laboriously built up are being torn apart. The rupture of systems of social integration is leaving chunks of pre-existing roots of religion, ethnic identity and race, or generally, as we have seen, a strange and violent combination of these. If culture is incapable of supplying the mortar to cement the past to the future, the present becomes deeply confusing and disturbing for people.

80. While it is true that the issue of economic, social and cultural rights arose in a cold war context, those rights have today received new and renewed validation. During the cold war they served to establish a balance between the civil and political rights supposedly respected by the western democracies as against the economic, social and cultural rights on which emphasis was laid by the countries with centralized planning. Once this polarity was broken, it was simply a question of the relationship between the possessors of wealth and the dispossessed, those suffering discrimination and exclusion. The question of economic, social and cultural rights is metamorphosing into the question of the rights of the poor and excluded in a globalized world. Developing these rights is to prevent silence from taking hold among the innocent. 64/

IV. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions and suggestions

81. Income distribution, in conclusion, has shown itself to be a good indicator of the degree of equity or inequity of a given economy and society at the international and at the national levels. Poor income distribution constitutes a specific type of discrimination that very often aggregates with other discrimination, such as ethnic, gender, race, or minorities who experience discrimination for diverse reasons of language, religion or customs, and has as a consequence the new forms of poverty that are the scourge of the world today. When they attain persistent and permanent levels, poor income distribution and poverty are a violation of the rights of persons, and of their capacity to realize and enjoy the rights established by the international community.

63/ See Peter Gottschalk, Bjorn Gustafson and Edward Palmer (eds.), The Distribution of Economic Welfare in the 1980s, Cambridge University Press, 1997.

64/ The report of the Special Rapporteur Mr. Leandro Despouy on human rights and extreme poverty (E/CN.4/Sub.2/1996/13) submitted to the Sub-Commission in August 1996 is conclusive in asserting that extreme poverty has been identified as "denial of human rights overall" (para. 205).

82. The "justiciability" of human rights, and especially of economic, social and cultural rights, is the greatest challenge to the juridical system for the protection of persons at both national and international levels. There has been much advance in the last few years. 65/ By "justiciability" we mean the process whereby the rights established in the International Covenants on Human Rights and other instruments may effectively be claimed in courts of justice and public bodies and justice may be administered as in the case of any other right that has been violated. This is an evolving process of the utmost importance. The rights established in the Covenants and international instruments that have been adopted constitute the basic framework to make possible a humanely balanced economic globalization and prevent tendencies to "perverse" globalization from imposing themselves.

83. For economic, social and cultural rights to be adequately exercised the first step consists in ratification of the Covenants and treaties on the rights of workers, and other instruments of protection. The Special Rapporteur appeals to those countries which have not yet ratified the International Covenant on Economic, Social and Cultural Rights (134 ratifications as at 31 December 1996) to do so. Global ratification and acceptance of the Covenant is fundamental for the improvement of the human condition.

84. The Special Rapporteur would also like to recall that, as stated Part I, paragraph 5, of the Vienna Declaration and Programme of Action, "all human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis" (...). With regard to the contents of this report, special attention should be devoted to the implementation of article 7 on the right of everyone to the enjoyment of just and favourable conditions of work and, inter alia, fair wages and equal remuneration for work of equal value. Likewise, the right of everyone to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of living conditions, as set out in article 11 of the Covenant, can be considered as another basic element of a more just society. Article 13 on the right to education and article 15 on, inter alia, the right of everyone to enjoy the benefits of scientific progress and its applications bring other important contributions to the debate.

85. Sustainable human development must become the first priority of the international community. The so-called "globalization" of the market risks being an empty word if the benefits of globalization are not shared among all sectors of the population, at the national and the international level. A part of the benefits deriving from economic growth should systematically be reinvested, both nationally and internationally, in human beings. This operation is not a charitable exercise: it is the first step toward the re-

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65/ We have received a letter from the European Commission of Human Rights, Council of Europe, drawing attention to a number of recent cases in the European Court of Human Rights in which discriminatory proceedings have been taken against certain persons because of their race or status, denying their economic rights. These cases are of enormous interest as they open a new juridical horizon. Letter from Mr. Wolfgang Peukert, Head, Case Law and Research Unit, 23 April 1997.

establishment of the human being, and not the market, as the first priority. Needless to say, this re-investment in the human being will certainly be beneficial to trade and economic exchanges in general, because it will revive moribund economic activities and will permit more human being-friendly new business to be explored.

86. The report concludes with the need to review and increase the level of international cooperation. The Special Rapporteur appeals to governments, international agencies and nongovernmental organizations to press for free trade agreements and treaties, and multilateral, bilateral, regional and other agreements making for greater globalization of economic relations to include a chapter or special protocol on international cooperation.

87. A strong, almost visionary political will would allow the implementation of article 2 of the Covenant, wherein each State Party undertakes "to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the Covenant" (...). As it will have been observed in this final report, States are not putting the "maximum available resources" into achieving greater balance in the distribution of income at the international level, and are not always doing so at the national level.

88. The implementation of universally recognized human rights is one of the basic elements of a new way of perceiving international relations, and is linked to the achievement of a more just world. International cooperation must be rebuilt on a new basis: the colonialist, often paternalistic approach must be replaced by a new attitude based on equal partnership wherein all actors are on an equal footing and have the same rights and the same responsibilities. The Special Rapporteur appeals for an increase in international cooperation, in self-sustaining development programmes, training and education of local management capacities.

89. The Special Rapporteur addresses an appeal to the collective and decision-making bodies of the United Nations, governments and specialized agencies, to generate dialogue between countries so that the developed countries (and, some say, the developing countries) attain the target of devoting 0.7% of their GDP to international cooperation.

90. Efforts have to be made to ensure that workers in developing countries receive fair remunerations, related to those paid in developed countries, and are not exploited for the mere economic benefit of transnational corporations. Similarly, States should ensure that enterprises operating abroad are not involved in commercial relations based on human rights violations such as bonded labour, child labour and debt bondage. The Special Rapporteur appeals to countries to step up their labour regulation controls to prevent the appearance of new covert forms of slavery. He also appeals to governments that have not ratified the labour conventions of the International Labour Organisation to do so. He appeals to workers' organizations to make use of the machinery of the United Nations system for the protection of human rights, so as not to allow the processes of globalization to be accompanied by a widespread increase in the exploitation of workers and their families.

91. The final report shows that the concepts of "equal opportunities" and "sustainable human development" are closely linked. The concept of "equal opportunities" means giving all human beings a chance to improve their conditions: it does not ensure that everyone's lot will improve, but it should make sure that the destiny of an individual is not predetermined because of his/her social background. There will be no large-scale human development if "equal opportunities" are not guaranteed. Basic human indicators such as life expectancy, adult illiteracy, infant mortality and equality between the sexes must be taken into account in the drafting of economic policies. An effective struggle in favour of the right to education and against extreme poverty will make a substantial contribution to the creation of a system of "equal opportunities". Moreover, societies that are increasingly divided into two blocs, the rich and the poor, could not fully enjoy the benefits of their accomplishments because they will constantly be threatened by social strife and internal turmoil, a situation not conducive to the promotion and observance of human rights.

B. Final recommendation: a Social Forum

92. The Special Rapporteur recommends to the Sub-Commission to request the High Commissioner/Centre for Human Rights to provide the Sub-Commission at its fiftieth session with a reference document which would list all studies prepared in recent years for the Sub-Commission on economic, social and cultural rights. Such a document would allow a global evaluation of the activities of the Sub-Commission and facilitate planning future steps in this field.

93. The Special Rapporteur recommends to the Sub-Commission that one of its members participate regularly in the meetings of the Committee on Economic, Social and Cultural Rights in order to create a durable link between the two bodies and to avoid overlapping activities.

94. Bearing in mind the fundamental role in the defence of human rights and the specific mandate in the prevention of situations relating to the full enjoyment of those rights, the Special Rapporteur recommends that the Sub-Commission discuss the establishment within it of a Forum on Economic, Social and Cultural Rights, hereinafter called the Social Forum, to which the following may be invited and may attend: (a) representatives of observer governments members of the Commission on Human Rights and other interested observer governments; (b) representatives of the specialized agencies of the United Nations, especially the World Bank, IMF, ILO, UNDP, UNICEF, UNIDO, UNESCO and other bodies concerned with the promotion and protection of economic, social and cultural rights; (c) representatives of international, regional and national organizations of workers, salaried staff, professionals and employers' organizations; (d) NGOs accredited to the Economic and Social Council (ECOSOC) and international development and cooperation agencies which are not accredited and would be offered a special accreditation procedure.

95. The Social Forum could be held on three special days signalled in advance and announced in the programme of the annual session of the Sub-Commission with the active participation of all its members. The Secretariat would send out special invitations and a special agenda for this Forum. A special invitation and report would be requested from the Chairman of the United Nations Committee on Economic, Social and Cultural Rights.

96. The Social Forum would have as its main objectives:

(a) Exchange of information on the enjoyment of economic, social and cultural rights and its relationship with the processes of globalization;

(b) Follow-up on the relationship between income distribution and human rights, at both the international and national levels;

(c) Follow-up on situations of poverty and destitution in the world, bearing in mind that this amounts to complete and permanent denial of the rights of persons;

(d) Proposal of standards and initiatives of a juridical nature, guidelines and other recommendations for consideration by the Commission on Human Rights, the Working Groups on the Right to Development, the Committee on Economic, Social and Cultural Rights, the specialized agencies and other instances of the international system of the United Nations;

(e) Follow-up to the agreements reached at the World Summit for Social Development in Copenhagen and the Earth Summit in Rio de Janeiro on the fulfilment of questions relating to this final report, and to economic, social and cultural rights in general.

97. The Sub-Commission should discuss whether to appoint a Special Rapporteur for economic, social and cultural rights, whose principal function would be to submit an annual report to the Social Forum, to be discussed by it. 66/ In that report the Special Rapporteur's main objectives would be:

(a) To reproduce, summarize and systematize the deliberations and conclusions of the annual Social Forum of the Sub-Commission on Prevention of Discrimination and Protection of Minorities;

(b) To construct and present, with the help of the specialized agencies of the United Nations system, indicators relating to the distribution of income at the international and national level, situations of poverty, situations of discrimination relating to those rights, and in particular to conditions of the rights to culture and education;

(c) To request documentation, reports and background from the specialized agencies of the United Nations and establish systems of communication and interchange with treaty organizations relating to economic, social and cultural rights and related working groups; and to pass on to them

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66/ This proposal is justified on the basis that as from 1996 there will not in practice have been any special report on economic, social and cultural rights, as Mr. Leandro Despouy, the Special Rapporteur on the question of human rights and extreme poverty, has come to the end of his mandate, as has Mr. El-Hadji Guissé on impunity in matters of economic, social and cultural rights and this Special Rapporteur on income distribution. Many opinions have been expressed to the effect that it would be a mistake for the Sub-Commission to abandon this fundamental sphere of human rights.

the information reaching the Social Forum, so that they may take the appropriate steps in concordance with their particular mandates;

(d) Through the Secretary-General of the United Nations, to request information from governments on national income distribution, levels of poverty, policies carried out to fully implement the economic, social and cultural rights in plans and programmes for international cooperation and other subjects relevant to these matters;

(e) To request information from the specialized agencies, governments and workers' organizations, and NGOs on conditions of work, remuneration and other aspects relating to the processes of globalization. This information will be collected especially in cases where women workers, groups of migrants, minorities and indigenous peoples are present, so as to analyse the diverse systems of discrimination and in particular to prevent them.

98. As part of his mandate, the Special Rapporteur should, with support from the Centre for Human Rights, summarize and synthesize the overall set of studies made by the Sub-Commission on matters of economic, social and cultural rights in the last ten years so that they may be made known to a broader public, and progress on these questions may be adequately evaluated.

Annexes

Table 1a

INTERNATIONAL DISTRIBUTION OF GDP BY QUINTILES
(millions of US$ at current value)

	1960	1970	1980	1990	1994
Quintile I	1,030,658	2,341,941	10,008,341	20,233,966	23,074,429
Quintile II	76,246	131,686	938,222	1,236,900	1,506,090
Quintile III	24,358	38,439	186,139	222,985	279,011
Quintile IV	8,879	10,765	56,946	84,164	90,043
Quintile V	2,439	2,667	14,476	15,737	16,611
	1,142,579	2,525,498	11,204,125	21,793,752	24,966,184

Table 1b

INTERNATIONAL DISTRIBUTION OF GDP BY QUINTILES
(percentage share)

	1960	1970	1980	1990	1994
Quintile I	90.20%	92.73%	89.33%	92.84%	92.42%
Quintile II	6.67%	5.21%	8.37%	5.68%	6.03%
Quintile III	2.13%	1.52%	1.66%	1.02%	1.12%
Quintile IV	0.78%	0.43%	0.51%	0.39%	0.36%
Quintile V	0.21%	0.11%	0.13%	0.07%	0.07%
	100.00%	100.00%	100.00%	100.00%	100.00%

Table 2

RANKING OF COUNTRIES BY INCOME DISTRIBUTION PATTERN

RATIO OF HIGHEST QUINTILE INCOME TO LOWEST QUINTILE INCOME			
		1985-90	1991-95
		QV:QI	QV:QI
LOW INCOME COUNTRIES			
1	Bangladesh	4.1	4.0
2	Lao People's Democratic Republic	4.2	4.2
3	Sri Lanka	4.4	4.4
4	Egypt	4.7	4.7
5	Pakistan	4.7	4.7
6	India	5.0	5.0
7	Ghana	6.3	5.3
8	Viet Nam	5.6	5.6
9	Niger	5.9	5.9
10	Nepal	4.3	5.9
11	Tanzania	6.6	6.6
12	Uganda	7.1	7.1
13	Madagascar	8.6	8.6
14	China	8.6	8.6
15	Nigeria	12.3	12.3
16	Zambia	12.9	12.9
17	Nicaragua	13.2	13.2
18	Honduras	23.5	15.1
19	Zimbabwe	15.6	15.6
20	Guinea	16.7	16.7
21	Kenya	18.2	18.2
22	Equatorial Guinea	28.0	28.0
23	Rwanda	4.0	n.a.
24	Ethiopia	4.8	n.a.
25	Côte d'Ivoire	6.5	n.a.
26	Mauritania	13.2	n.a.
27	Lesotho	20.7	n.a.
LOW MIDDLE INCOME COUNTRIES			
1	Slovakia	2.6	2.6
2	Czech Republic	3.6	3.6

RATIO OF HIGHEST QUINTILE INCOME TO LOWEST QUINTILE INCOME			
		1985-90	1991-95
		QV:QI	QV:QI
3	Ukraine	3.7	3.7
4	Romania	3.8	3.8
5	Indonesia	4.7	4.7
6	Bulgaria	4.7	4.7
7	Lithuania	5.2	5.2
8	Kazakhstan	5.4	5.4
9	Poland	3.9	5.7
10	Republic of Moldova	6.0	6.0
11	Morocco	7.0	7.0
12	Tunisia	7.8	7.8
13	Jamaica	7.3	8.2
14	Jordan	7.3	8.5
15	Bolivia	8.6	8.6
16	Thailand	8.3	9.4
17	Ecuador	9.7	9.7
18	Peru	10.5	10.3
19	Russian Federation	14.5	14.5
20	Colombia	15.5	15.5
21	Senegal	16.7	16.7
22	Kyrgyzstan	22.8	22.8
23	Algeria	6.7	n.a.
24	Philippines	7.4	n.a.
25	Costa Rica	12.7	n.a.
26	Dominican Republic	13.2	n.a.
27	Botswana	16.4	n.a.
28	Panama	29.9	n.a.
29	Guatemala	30.0	n.a.
UPPER MIDDLE INCOME COUNTRIES			
1	Belarus	3.0	3.0
2	Hungary	5.2	3.9
3	Slovenia	4.0	4.0
4	Turkmenistan	6.4	6.4
5	Estonia	7.0	7.0
6	Venezuela	10.3	16.2

RATIO OF HIGHEST QUINTILE INCOME TO LOWEST QUINTILE INCOME			
		1985-90	1991-95
		QV:QI	QV:QI
7	Chile	17.4	17.4
8	South Africa	19.2	19.2
9	Republic of Korea	5.7	n.a.
10	Yugoslavia	5.9	n.a.
11	Malaysia	11.7	n.a.
12	Mexico	13.6	n.a.
14	Brazil	32.1	n.a.
	HIGH INCOME COUNTRIES		
1	Spain	5.8	4.4
2	Netherlands	4.5	4.5
3	Belgium	4.5	n.a.
4	Sweden	4.6	n.a.
5	Germany	5.8	n.a.
6	Finland	6.0	n.a.
7	Italy	6.0	n.a.
8	Norway	6.4	n.a.
9	Canada	7.1	n.a.
10	Denmark	7.1	n.a.
11	France	7.5	n.a.
12	Switzerland	8.5	n.a.
13	Hong Kong	8.7	n.a.
14	New Zealand	8.8	n.a.
15	United States of America	8.9	n.a.
16	Singapore	9.6	n.a.
17	Australia	9.6	n.a.
18	United Kingdom	9.6	n.a.
1	Slovakia	2.6	2.6
2	Belarus	3.0	3.0
3	Czech Republic	3.6	3.6
4	Ukraine	3.7	3.7
5	Romania	3.8	3.8
6	Hungary	5.2	3.9
7	Slovenia	4.0	4.0

RATIO OF HIGHEST QUINTILE INCOME TO LOWEST QUINTILE INCOME			
		1985-90	1991-95
		QV:QI	QV:QI
8	Bangladesh	4.1	4.0
9	Lao People's Democratic Republic	4.2	4.2
10	Spain	5.8	4.4
11	Sri Lanka	4.4	4.4
12	Netherlands	4.5	4.5
13	Indonesia	4.7	4.7
14	Bulgaria	4.7	4.7
15	Egypt	4.7	4.7
16	Pakistan	4.7	4.7
17	India	5.0	5.0
18	Lithuania	5.2	5.2
19	Ghana	6.3	5.3
20	Kazakhstan	5.4	5.4
21	Viet Nam	5.6	5.6
22	Poland	3.9	5.7
23	Niger	5.9	5.9
24	Nepal	4.3	5.9
25	Republic of Moldova	6.0	6.0
26	Turkmenistan	6.4	6.4
27	Tanzania	6.6	6.6
28	Morccco	7.0	7.0
29	Estonia	7.0	7.0
30	Uganda	7.1	7.1
31	Tunisia	7.8	7.8
32	Jamaica	7.3	8.2
33	Jordan	7.3	8.5
34	Bolivia	8.6	8.6
35	Madagascar	8.6	8.6
36	China	8.6	8.6
37	Thailand	8.3	9.4
38	Ecuador	9.7	9.7
39	Peru	10.5	10.3
40	Nigeria	12.3	12.3
41	Zambia	12.9	12.9

RATIO OF HIGHEST QUINTILE INCOME TO LOWEST QUINTILE INCOME			
		1985-90	1991-95
		QV:QI	QV:QI
42	Nicaragua	13.2	13.2
43	Russian Federation	14.5	14.5
44	Honduras	23.5	15.1
45	Colombia	15.5	15.5
46	Zimbabwe	15.6	15.6
47	Venezuela	10.3	16.2
48	Guinea	16.7	16.7
49	Senegal	16.7	16.7
50	Chile	17.4	17.4
51	Kenya	18.2	18.2
52	South Africa	19.2	19.2
53	Kyrgyzstan	22.8	22.8
54	Equatorial Guinea	28.0	28.0
55	Rwanda	4.0	n.a.
56	Belgium	4.5	n.a.
57	Sweden	4.6	n.a.
58	Ethiopia	4.8	n.a.
59	Republic of Korea	5.7	n.a.
60	Germany	5.8	n.a.
61	Yugoslavia	5.9	n.a.
62	Finland	6.0	n.a.
63	Italy	6.0	n.a.
64	Norway	6.4	n.a.
65	Côte d'Ivoire	6.5	n.a.
66	Algeria	6.7	n.a.
67	Canada	7.1	n.a.
68	Denmark	7.1	n.a.
69	Philippines	7.4	n.a.
70	France	7.5	n.a.
71	Switzerland	8.6	n.a.
72	Hong Kong, Province of China	8.7	n.a.
73	New Zealand	8.8	n.a.
74	United States	8.9	n.a.
75	Singapore	9.6	n.a.

RATIO OF HIGHEST QUINTILE INCOME TO LOWEST QUINTILE INCOME			
		1985-90	1991-95
		QV:QI	QV:QI
76	Australia	9.6	n.a.
77	United Kingdom	9.6	n.a.
78	Malaysia	11.7	n.a.
79	Costa Rica	12.7	n.a.
80	Mauritania	13.2	n.a.
81	Dominican Republic	13.2	n.a.
82	Mexico	13.6	n.a.
83	Botswana	16.4	n.a.
84	Lesotho	20.7	n.a.
85	Panama	29.9	n.a.
86	Guatemala	30.0	n.a.
87	Brazil	32.1	n.a.